

PREHEARING CONFERENCE and COMMITTEE ORDER
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
for the Morro Bay Power Plant)	00-AFC-12
Project)	
_____)	

VETERANS MEMORIAL HALL
209 SURF STREET
MORRO BAY, CALIFORNIA

THURSDAY, NOVEMBER 29, 2001

9:15 a.m.

Reported by:
Duncan Fankboner
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Michal Moore, Commissioner, Presiding Member

Gary Fay, Hearing Officer

Terry O'Brien, Adviser to Chairman Keese

STAFF PRESENT

Caryn Holmes, Staff Counsel

Kae C. Lewis, Project Manager

Garret Shean, Hearing Officer

PUBLIC ADVISER

Robertta Mendonca

APPLICANT

Christopher T. Ellison, Attorney,
Ellison, Schneider and Harris

Andrew L. Trump, Director of Business Development
Western Region

Robert E. Cochran, II, Project Manager

Michael Pollack

Wayne Hoffman, Environmental Manager

Duke Energy North America

Russell J. Poquette, Executive Project Director
Duke Fluor Daniel

Bob Mason
TRC Solutions

Kirk Marckwald
California Environmental Associates

INTERVENORS

Henriette Groot, President

Pamela Soderbeck

Babak Naficy, Staff Attorney

Environmental Defense Center

Coastal Alliance on Plant Expansion

ALSO PRESENT

Greg Fuz, Public Services Director
Rob Schultz, City Attorney
Jeffrey F. Jones, Fire Chief
City of Morro Bay

Barry Groveman, Attorney
Musick, Peeler, Garrett, LLP
representing City of Morro Bay

Gary Willie, Project Engineer
San Luis Obispo County Air Pollution Control
District

Michael Thomas
Regional Water Quality Control Board

Dan Chia
California Coastal Commission

Jack McCurdy

Dr. Richard Smith

Patti Dunton

Bonita Churney

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1 P R O C E E D I N G S

2 9:15 a.m.

3 PRESIDING MEMBER MOORE: I'm going to
4 turn to introductions from the applicant, and I'll
5 ask them to introduce their team and anyone else
6 who is here to support them in the audience.

7 MR. TRUMP: I'm Andrew Trump with Duke
8 Energy.

9 MR. ELLISON: Chris Ellison, Ellison and
10 Schneider, counsel for Duke Energy.

11 MR. HOFFMAN: Wayne Hoffman,
12 Environmental Manager with Duke Energy.

13 PRESIDING MEMBER MOORE: Any other of
14 your team which you need to introduce in the
15 audience?

16 MR. TRUMP: We have several other
17 people, part of our team. I don't know whether --

18 PRESIDING MEMBER MOORE: I mean if
19 they're part of this application and will be
20 speaking today.

21 MR. TRUMP: Yes. Michael Pollack and
22 Bob Cochran, Russ Poquette of DFD, and Bob Mason
23 of TRC, and I believe Kirk Marckwald with
24 California Environmental Associates.

25 PRESIDING MEMBER MOORE: Thank you very

1 much. Let me turn then to staff. Kae, would you
2 introduce the team.

3 MS. LEWIS: I'm Kae Lewis, Project
4 Manager for the Energy Commission. To my left is
5 Caryn Holmes, Staff Counsel. And then Roberta
6 Mendonca, the Public Adviser, is also here.

7 PRESIDING MEMBER MOORE: All right. Mr.
8 Fuz.

9 MR. FUZ: Greg Fuz, Public Services
10 Director, City of Morro Bay.

11 MR. SCHULTZ: Rob Schultz, City Attorney
12 for Morro Bay.

13 MR. GROVEMAN: Barry Groveman,
14 Litigation Counsel for the City of Morro Bay.

15 PRESIDING MEMBER MOORE: And any of the
16 intervenors who are here, let me turn to them and
17 ask them to introduce themselves.

18 MS. GROOT: Henriette Groot, Coastal
19 Alliance on Plant Expansion. On my left Babak
20 Naficy from the Environmental Defense Center. On
21 my right, Pam Soderbeck has helped with some of
22 the legal work - I'm sorry, she's not a lawyer,
23 but she is an assistant in this matter.

24 PRESIDING MEMBER MOORE: Thank you.
25 There may be other public agencies who are present

1 and/or on the telephone line that we've set up, so
2 let me ask if there's any representative of a
3 public agency concerned with this project who is
4 in the audience today. If they'd come forward to
5 the lectern and introduce themselves, please.

6 Good morning.

7 MR. WILLIE: Gary Willie, Air Pollution
8 Control District.

9 PRESIDING MEMBER MOORE: Good morning,
10 Mr. Willie, glad to have you.

11 MR. THOMAS: Michael Thomas with the
12 Regional Water Quality Control Board.

13 PRESIDING MEMBER MOORE: Good morning
14 and thank you.

15 Is there anyone on the phone who is
16 representing a public agency who would like to
17 introduce themselves? We may be joined by a
18 member of the Coastal Commission Staff as the
19 morning progresses.

20 With that, let me just set the stage for
21 our proceedings today, and that will be to say
22 this: The Committee scheduled today's prehearing
23 conference in a notice and order dated November
24 9th of this year.

25 As we explained in that notice the basic

1 purpose of this morning's meeting is to assess the
2 parties' readiness for hearing in the upcoming
3 days; and to clarify areas of agreement or
4 dispute; to identify witnesses and exhibits; and
5 to determine upon which areas the parties desire
6 to cross-examine witnesses from other parties; and
7 to discuss some associated procedural items or
8 steps that we might need to take.

9 To achieve that end we required in the
10 notice that any party that desired to participate
11 this morning or present evidence or cross-examine
12 witnesses at future evidentiary hearings needed to
13 file a prehearing conference statement by this
14 past Monday, which was November 26, 2001.

15 The following parties have filed
16 prehearing conference statements and we have them.
17 You can correct me if I'm in error: The
18 applicant; staff; CAPE; EDC in a letter; and the
19 City of Morro Bay in a letter.

20 Other statements and documents relevant
21 to today's discussion include the November 15th
22 final staff assessment, part one. And staff will
23 identify what the relationship of part one to any
24 other parts is in their declarations. And staff's
25 November 19, 2001 status report.

1 And finally, in the November 9 order we
2 established Tuesday, November 27th, as the
3 deadline for intervention. The City of Morro Bay
4 filed a petition to intervene prior to the
5 deadline, and I have received a late intervention
6 request from Patti Dunton, representing the Selian
7 Tribe.

8 I'll ask for comments about the
9 intervention requests at the end of this hearing.
10 And we'll make a ruling on those intervention
11 requests tomorrow. And we'll make that available
12 by the close of business tomorrow, Friday.

13 In terms of procedures I intend to
14 address all the specific topics first. This will
15 involve discussions by all the parties who filed
16 prehearing conference statements. And as time
17 permits, we'll then take on public comments on all
18 the matters we've discussed today, and then on
19 more general matters.

20 The basic intent today is to determine
21 which topic areas appear ready for hearing in the
22 near term. And which will necessarily be the
23 subject of the second prehearing conference, if we
24 have one, and later evidentiary hearings that may
25 come beyond the Christmas date, and into early in

1 the new year.

2 The latter group includes at least the
3 topics of biological resources, cultural
4 resources, land use, soil and water and
5 alternatives.

6 So based on the information that we have
7 available today, it would appear that additional
8 analysis is still required on some of those.

9 Areas for later hearings include other
10 items that are filed with us, and those items that
11 we are likely to hear about today, and so I'm
12 going to turn then to the staff and the applicant
13 to at least update us on some of the five upcoming
14 topics, or the ones that are incomplete.

15 Kae, can I turn to you for an update on
16 where we are? Perhaps you can elaborate on the --
17 and let me -- one other comment. I've stepped a
18 little out of turn here.

19 And that is this is a prehearing
20 conference. It is not a discussion of the
21 evidence that might be before us or will come
22 before us. So, while we've been fairly indulgent
23 in the past in listening to public concerns about
24 the areas that people see or feel will be an issue
25 in the future, this is not the hearing to present

1 those.

2 So, while I will entertain general
3 public comments at the end, frankly this is
4 designed to be a procedural conference. This is
5 designed to help me organize data and organize the
6 hearings in order to have a schedule that everyone
7 can meet, and allow me to produce a decision in a
8 timely manner.

9 So, discussions about facts or opinions
10 regarding the information or data that we have are
11 necessarily or probably more appropriately
12 discussed in the evidentiary hearings yet to come.

13 So, let me, in the area of later
14 hearings, turn to staff and ask Kae to give us
15 some elaboration on where we stand.

16 MS. LEWIS: The staff did file part one
17 of the final staff assessment November 15th, and
18 that included all the topics with the exception of
19 alternatives, biological resources, cultural
20 resources, land use and soil and water resources.
21 And those are the topics that the staff is now
22 working on for later parts of the FSA.

23 They're also working on an appendix to
24 the biological resources testimony that addresses
25 the possible mitigation options for impacts to

1 aquatic biological resources. And this also
2 includes the cooling options report and habitat
3 equivalency study.

4 The applicant had filed project
5 modifications on October 19th. The staff had
6 issued data requests and have received responses
7 on November 21st --

8 PRESIDING MEMBER MOORE: To all the data
9 requests?

10 MS. LEWIS: Yes. And at the moment the
11 staff is reviewing those. And we know they're
12 complete in land use; and the staff is still
13 reviewing the others.

14 The issues in biological resources that
15 have delayed that particular topic involve the
16 fact that the staff is waiting to hear from the
17 U.S. Fish and Wildlife Service on the need for
18 formal or informal consultation.

19 And the applicant had resubmitted the
20 biological assessment, but as of November 27th the
21 Fish and Wildlife Service had not reviewed or
22 approved the biological assessment; nor had they
23 received the coastal dune restoration plan which
24 was part of the data responses the Energy
25 Commission received on November 21st.

1 In addition to waiting for that --

2 PRESIDING MEMBER MOORE: Can we stop.

3 Can you go back to the dune restoration. We've
4 received that --

5 MS. LEWIS: Yes, we have.

6 PRESIDING MEMBER MOORE: -- but they --
7 and then what have we done with that? And then
8 what, in turn, are Fish and Wildlife --

9 MS. LEWIS: Our staff is currently
10 reviewing it. And the U.S. Fish and Wildlife
11 Service had said that they had not received it at
12 that point.

13 They need to take that into
14 consideration as part of the biological
15 assessment.

16 PRESIDING MEMBER MOORE: So help me with
17 how they haven't received it. Is that a
18 formality? Is that a step that is involved in
19 their own dockets procedures? Or is it that they
20 simply didn't get the document?

21 MS. LEWIS: I think they said they
22 didn't get the document yet.

23 PRESIDING MEMBER MOORE: And that was
24 prepared by?

25 MS. LEWIS: The applicant.

1 PRESIDING MEMBER MOORE: And delivered
2 to us on day X -- on the 27th --

3 MS. LEWIS: It was delivered to us on
4 the 21st. Fish and Wildlife Service had also
5 indicated that they were reassigning staff, and it
6 could just be a logistics problem there.

7 PRESIDING MEMBER MOORE: Okay. So we
8 have a contact point there, and we expect them to
9 deal with it in due time. Are they under any kind
10 of a constraint that requires them to produce
11 things in a timely manner?

12 MS. LEWIS: Not that I know of.

13 PRESIDING MEMBER MOORE: Okay. Please
14 continue.

15 MS. LEWIS: Also the staff is working on
16 the cooling options report and habitat equivalency
17 study. And that has been running later than we
18 had hoped. And we expect that to be complete by
19 December 14th.

20 PRESIDING MEMBER MOORE: Okay. If it's
21 complete by -- well, first of all, why has it been
22 running later than you thought? What turned out
23 to be a bigger challenge or a harder hurdle than
24 you thought?

25 MS. LEWIS: Well, the purpose of the

1 report is to propose mitigation for the impacts to
2 biological resources, aquatic biological
3 resources. And developing those options and
4 determining the impacts of those options takes the
5 coordination of a lot of people, staff and
6 consultants. And unfortunately it's taking longer
7 than we hoped to get that completed.

8 PRESIDING MEMBER MOORE: Kae, what's the
9 practical effect of getting it on the 14th as far
10 as an intelligent and thoughtful review of it, or
11 will you have seen enough of it by that point so
12 that it will simply be a formality that you get
13 the report on the 14th? You've already thought --

14 MS. LEWIS: Well, we're expecting that
15 we will have it reviewed internally by the 14th.

16 PRESIDING MEMBER MOORE: Okay. So that
17 means that we would expect that it could be
18 discussed during the September 17th through 19th
19 period?

20 MS. LEWIS: The report, itself, needs to
21 then be coordinated with the rest of the
22 biological FSA. So, having it be ready by the
23 14th is like an internal date. That's not a date
24 that that report's going to be filed.

25 PRESIDING MEMBER MOORE: Okay.

1 MS. LEWIS: We believe that by December
2 14th we will, however, be able to have completed,
3 and be able to file, as part of the second part of
4 an FSA, the other sections, the land use, cultural
5 and soil and water resources.

6 But that we will need more time for
7 biology and alternatives just because alternatives
8 will have to wait for all sections to be completed
9 before it can be completed.

10 PRESIDING MEMBER MOORE: And are you
11 able to make an estimate on time? That would be a
12 third part, then?

13 MS. LEWIS: Right.

14 PRESIDING MEMBER MOORE: And without
15 trying to set a date today, do you have an
16 estimate of when that is possible?

17 MS. LEWIS: In mid January, January 14th
18 I believe is the date.

19 PRESIDING MEMBER MOORE: Okay. And so
20 that would then be available, and alternatives at
21 the same time?

22 MS. LEWIS: Yes.

23 PRESIDING MEMBER MOORE: Then that means
24 that that would be available for an evidentiary
25 hearing ten days after that? I mean that's the

1 shortest notice time that it could be out, so that
2 would be no hearing on that until 25, 26 or
3 beyond.

4 MS. HOLMES: I think the regulations
5 actually require 14 days, but the Committee can
6 shorten it if they need to, so.

7 PRESIDING MEMBER MOORE: All right, so
8 that means that the most likely hearing date would
9 be in the late January period, at best.

10 MR. ELLISON: Commissioner, if I could
11 interrupt with just a technical point.

12 PRESIDING MEMBER MOORE: Mr. Ellison.

13 MR. ELLISON: In factoring that schedule
14 you also need to consider the time for other
15 parties to review and file their own testimony on
16 those issues.

17 PRESIDING MEMBER MOORE: I'm aware of
18 that, and I'm just trying to imagine what the most
19 compressed time would be. Rarely turns out to be
20 the most compressed time, but at least it sets a
21 date beyond which we can then begin to imagine
22 what might really happen. So, it helps me.

23 Ms. Lewis, please continue.

24 MS. LEWIS: I think that's it.

25 PRESIDING MEMBER MOORE: Okay. All

1 right, for future topics then let's turn to the
2 applicant. Mr. Ellison.

3 MR. ELLISON: As set forth in our
4 prehearing conference statement we think all of
5 the FSA part one issues are ready to go to
6 hearing. We have some recommendations on the
7 order that these issues be taken up, and we can
8 discuss those at your discretion.

9 With respect to the FSA part two issues,
10 I think -- I don't have much to add to Ms. Lewis'
11 description of where that stands. Obviously we're
12 disappointed that the biology and alternatives
13 issues can't be issued as scheduled on the 15th.
14 But if they can't, they can't.

15 The additional information that we can
16 provide is that we do now have a formal letter
17 from the Environmental Protection Agency
18 recommending to the Fish and Wildlife Service an
19 informal consultation process.

20 And we have, in discussions with Fish
21 and Wildlife Service, we believe that they will
22 agree to that. But they have not yet formally
23 made that decision. I want to make that clear.
24 But the EPA has made a formal recommendation on
25 that issue. So I think that sends a signal that

1 the federal government is headed towards an
2 informal consultation on those issues.

3 PRESIDING MEMBER MOORE: With regard to
4 the dune restoration plan that was submitted by
5 your consultants, was that also delivered to Fish
6 and Wildlife at the same time that it was
7 delivered to the Energy Commission Staff?

8 MR. ELLISON: That was certainly my
9 understanding and our intention. I will have to
10 check to confirm that it was, and we'll have to
11 get back to you and make sure that it was.

12 Mr. Hoffman tells me that it was
13 delivered at the same time as it was delivered to
14 the staff.

15 PRESIDING MEMBER MOORE: All right. And
16 so you have no other information beyond you agree
17 with the part two issues as presented, and you're
18 saddened, but you agree on the part three
19 trifurcation?

20 MR. ELLISON: That's correct. We need
21 to set a date for the filing of other parties'
22 testimony on the part two issues that will be
23 filed by the staff on the 15th of December. And
24 we can talk about that.

25 Just in brief, our recommendation for

1 the order of part one issues to be heard, we think
2 it's logical to begin with project description and
3 we would recommend that we then go to the air
4 quality, public health, worker safety related
5 issues, which we think are ripe and ready to be
6 heard. And of considerable public interest.

7 We do have one logistical constraint
8 which is part of our recommendation, and that is
9 that the applicant's air quality witness is only
10 available for the first day of the December
11 hearings, the December 17th day. He is not
12 available for the 18th or the 19th.

13 PRESIDING MEMBER MOORE: Okay, other
14 than that you have no recommendation as far as
15 procedural?

16 MR. ELLISON: We have recommended that
17 after the air quality public health issues are
18 resolved that then the issues that we believe are
19 either entirely undisputed or have very minor
20 issues be taken up. We've listed those in our
21 prehearing conference statement.

22 And then of the part one issues, the
23 ones that we think are logical to come last of the
24 part one issues, would be noise and visual and
25 traffic and transportation.

1 PRESIDING MEMBER MOORE: Okay. I didn't
2 get -- let me turn back, Mr. Ellison, for just a
3 moment to staff. I didn't get a reaction on the
4 rank order of hearing, do you have preferences
5 that are in your work? Do you have any witnesses
6 that you'd be bringing that are time constrained?
7 Otherwise some procedural rank order that would be
8 more efficient for you?

9 MS. HOLMES: We don't that we're aware
10 of right now, but as you know, because there are a
11 number of workshops being scheduled for a number
12 of projects, we're going to have to a little bit
13 play that by ear.

14 We did offer some suggestions in our
15 prehearing conference statement about potentially
16 postponing some of the areas that are published in
17 the FSA part one, postponing the hearings until
18 January just because a number of people have
19 raised issues, and we want to have time to be able
20 to respond to them.

21 Air quality is one of them; noise was
22 another potential issue. Traffic and
23 transportation, we've actually got -- I think that
24 we may be, in fact, ready to proceed with that in
25 December, although we had suggested it might be

1 appropriate to postpone, because we've been able
2 to track down all the issues that were raised.

3 But as to the, you know, which one goes
4 first or second, we didn't express any specific
5 preference.

6 PRESIDING MEMBER MOORE: Maybe we should
7 spend a minute with that. If I'm taking air
8 quality, noise and traffic, it's beginning to
9 sound like the BLT sandwich in six easy pieces, or
10 five easy pieces. Only the bread will be left. I
11 mean if I pull those then the only thing that's
12 left in this list is the project description. We
13 probably wouldn't need three days to hear that.

14 MS. HOLMES: No, I think you have
15 hazardous materials, socioeconomics. Again, I
16 think we can move forward to traffic and
17 transportation, transmission line safety and
18 nuisance, waste management and worker safety.

19 And, again, we can proceed in December
20 if you like. Our comment was directed at the fact
21 that people have raised a number of concerns about
22 air quality. The Coastal Commission has raised
23 some concerns about visual issues.

24 If we have additional time to be able to
25 respond to those, we'll take advantage of it and

1 be able to provide complete responses. But that's
2 ultimately the Committee's decision. If they
3 decide to go in December, we're ready.

4 PRESIDING MEMBER MOORE: Well, clearly,
5 I understand that we have the jurisdiction to do
6 that, but there's really no -- there's no benefit
7 to anyone if we go halfway through air quality and
8 then have to reinvent it, considering that it's a
9 significant a topic as it is. Same thing with
10 visual.

11 MS. HOLMES: Right, I wouldn't recommend
12 that you start -- that you not complete a topic in
13 December. If you're going to start it I think you
14 ought to finish it.

15 PRESIDING MEMBER MOORE: Well, given
16 what you've seen of the late filing on air
17 quality, just to keep that area in front of us for
18 a second, do you think it would be possible, if we
19 initiated air quality, to go ahead and finish it,
20 or would it be your opinion today, counsel, that
21 we simply couldn't make it, given the information
22 that we're likely to have to consider?

23 I'm asking for your opinion.

24 MS. HOLMES: I think it might be
25 difficult to finish it.

1 PRESIDING MEMBER MOORE: That would put
2 the burden, if we didn't initiate it, that would
3 put the burden on a second set of hearings in late
4 January, which would then have to be fairly
5 extensive, perhaps more than three days in length.
6 That would change the dynamic of what would have
7 to happen.

8 What would be your opinion about
9 delaying it to a late-in-January period and
10 consolidating it with the part two of the FSA?

11 MS. HOLMES: I think that we were hoping
12 to be able to deal with the remainder of the part
13 one topics with the part two topics, either at the
14 hearings that you've scheduled, or later in
15 January. Either one is acceptable to staff.

16 PRESIDING MEMBER MOORE: Okay, well,
17 counsel for the applicant, you've obviously been
18 hearing this discussion. Do you have a reaction
19 to what you're hearing as far as difficulty
20 dealing with -- and I'll stay with air quality.
21 The visual matter, it seems to me, is a little
22 more straightforward, and perhaps won't produce as
23 much in terms of quantification that we're likely
24 to hear in the air quality hearing, so let's use
25 that as an icon.

1 What's your reaction to the time that
2 might be needed to hear what's come in, and then
3 perhaps take it on as an alternative in late
4 January?

5 MR. ELLISON: I think it's very
6 important to distinguish between issues where
7 there is not perfect agreement and issues which
8 are not ready for hearing.

9 The purpose of the hearings is to
10 resolve disputed issues. And so the fact that
11 there remain concerns or disputes does not mean an
12 issue is not ready to be heard.

13 And when I look at the issues, for
14 example, on air quality. Staff has published
15 their FSA on that. We have the FDOC on that. We
16 are certainly ready to go to hearing on that.
17 CAPE has filed extensive information on that.

18 My sense is that although there are
19 issues there, that the parties understand what
20 they are and are ready to go to hearing on those
21 issues.

22 I feel the same way about traffic and
23 transportation and visual. Of those, though, if I
24 were to pick one where I think more time might be
25 most usefully put towards continuing to try and

1 resolve the issues, visual would be the one that I
2 would postpone. Because I think the Coastal
3 Commission has raised some issues very recently.
4 And if we had more time to work with the Coastal
5 Commission, we think we might be able to have some
6 productive discussions with them on those
7 questions.

8 But, as far as we're concerned, all of
9 the part one issues are ready to go to hearing.
10 Staff agrees with that. And that includes air
11 quality as well as the others.

12 PRESIDING MEMBER MOORE: And when you
13 look out to the trifurcation suggested by staff
14 for biological resources, and the cooling water
15 discharge issues, do you have a reaction to the
16 third part being heard well after the other two
17 parts?

18 MR. ELLISON: Well, if staff does not
19 file their FSA until mid January then by necessity
20 it will have to be that way. And, you know, we
21 obviously would -- we will be ready to go to
22 hearing very shortly after that third part of the
23 FSA is issued. We'll need a reasonable amount of
24 time, as I think all parties will, to review it
25 and file our own testimony in response to it. But

1 that's a matter of days, certainly, not weeks.

2 So I think that kind of bifurcation is,
3 given where staff is, is appropriate; and in fact,
4 is probably the only course of action the
5 Committee can take.

6 But with respect to the other issues,
7 for example, again air quality, you know, we think
8 that that can certainly be heard within the
9 timeframe of the December hearings if you begin
10 right after project description with air quality.
11 We would think you'd be able to get through it
12 that day.

13 Just because there are issues doesn't
14 mean that there is necessarily a huge amount of
15 time involved to put them -- for the parties to
16 explain their positions and put in their evidence.

17 PRESIDING MEMBER MOORE: All right.
18 Other comments from the applicant on the areas for
19 later hearing?

20 All right, let me turn to the City and
21 ask them if they've got any comments.

22 MR. SCHULTZ: Rob Schultz, City Attorney
23 for Morro Bay. The City did file a prehearing
24 conference statement. It was a day late, and we
25 apologize for that. We had a Council meeting

1 Monday night and could not file that until after
2 the City Council had a time to review that.

3 PRESIDING MEMBER MOORE: Understand.

4 MR. SCHULTZ: In that we basically state
5 that the City objects to any evidentiary hearings
6 being held until the final FSA is out. It's the
7 City's position that we need the entire FSA to
8 review and to determine and analyze the issues
9 together.

10 We feel that we can't piecemeal in the
11 part. There's issues that are related to water,
12 as they relate to noise, as they relate to visual
13 that are very important.

14 If, in fact, the FSA comes out and
15 requires air cooling, that definitely would affect
16 our analysis on noise and on visuals and other
17 issues.

18 So, at this point in time it's the
19 City's position that there are no topics that are
20 ready for evidentiary hearings.

21 PRESIDING MEMBER MOORE: There are no
22 topics?

23 MR. SCHULTZ: No topics.

24 PRESIDING MEMBER MOORE: All right.

25 Well, I appreciate your position, counselor. You

1 understand the position that I'm in, where I have
2 time constraints, as well, and have to deal with
3 them.

4 I'm assuming that the City is making
5 their objections known for the record, and the
6 references are included in that. But that should
7 we decide to go ahead, you will be an active
8 participant and a cooperative witness and resource
9 for us.

10 MR. SCHULTZ: Absolutely. I would also
11 just point out two other items. We just hired
12 special litigation counsel, Barry Groveman from
13 Musick, Peeler. And his schedule, though, for
14 that December 18th through 20th, is not available.
15 And I'd also point out to the Commissioner, that
16 the California League of Cities Conference, which
17 was scheduled September 12th, but because of the
18 situation in New York, it was continued until the
19 December 18th through the 20th, also, in
20 Sacramento.

21 So those dates, there's certain staff
22 that aren't available and City Council Members
23 aren't, and we would object, also, for the
24 hearings on those dates.

25 PRESIDING MEMBER MOORE: Well, I

1 understand that, and I should have said something
2 in my opening remarks about being personally sorry
3 that I ended up scheduling these hearings on the
4 dates when I did, but I believe I was pretty clear
5 at the front end on the times that I needed
6 information, and the time when I expected the
7 information to be filed.

8 And the fact that it came in late, or
9 there were delays, which I offer no pejorative
10 comment on at all, but there were delays, in a
11 sense forced me to maintain a schedule that is a
12 little uncomfortable for people as far as the
13 holidays go. And all I can say is that I'm going
14 to end up sharing that discomfort as we go through
15 this, if we proceed apace as we've been
16 discussing. Thank you very much, counselor.

17 For the intervenors? For CAPE?

18 MS. GROOT: Henriette Groot, Coastal
19 Alliance on Plant Expansion. We also deplore the
20 bifurcation or possible trifurcation of the FSA.
21 I want to remind you of the fable of the six blind
22 men trying to describe an elephant. Their problem
23 was they couldn't see the whole picture.

24 Having said that, briefly, and then I'll
25 hand it over to Pam, we do have some issues which

1 we think could be addressed, waste management,
2 geology and paleontology, and power plant
3 reliability.

4 Furthermore, I would like to mention
5 that in the final biological assessment for U.S.
6 Fish and Wildlife, there was some missing parts,
7 and we made phone calls and still have not
8 received those missing parts. And if there was a
9 dune restoration plan, we haven't seen that,
10 either.

11 Pam.

12 MS. SODERBECK: Let me make one thing
13 clear for the record. I am in my capacity as a
14 resident of Morro Bay. I once practiced law way
15 back when. I'm an inactive bar member and do not
16 practice law or pretend to anymore.

17 I am a resident here, and have spoken
18 individually in the past. And decided rather than
19 to intervene on my own account, at the last minute
20 I would join the Alliance on certain issues,
21 specifically related to air quality and a few
22 others.

23 But, with respect to the air quality,
24 itself, we have raised a number of issues. And I
25 think they will take some time to sort through all

1 of those.

2 In addition, the overriding factor
3 really is even those issues are not complete.
4 Because we know that air is going to be impacted
5 by what's likely going to be raised now in the
6 part three.

7 We are of small resources, and it would
8 be very difficult for us to address air, and then
9 readdress air again in connection with mitigation
10 and alternatives.

11 So I think that one definitely should be
12 put off.

13 Some of the others we may be able to
14 address a little bit sooner, but again, noise and
15 vibration and visual all are subject to the same
16 problem of they'll be impacted, without a doubt,
17 by the biology and alternatives discussion. And
18 we just don't have the resources to discuss them
19 twice.

20 In addition, in the preconference
21 statement that was filed, we raised some recent
22 information that has come up which I think
23 deserves attention by the staff before it's
24 addressed in public hearings. And that relates to
25 a number of things, traffic and air and I guess

1 socioeconomic and a few others.

2 So, for all those reasons I think we
3 need to have all of the hearings put off, with the
4 possible exception of the three areas that
5 Henriette described as maybe being ready.

6 PRESIDING MEMBER MOORE: That's waste
7 management, geology and power plant reliability?

8 MS. GROOT: Yes.

9 MR. NAFICY: I'm Babak Naficy; I'm Staff
10 Attorney with the Environmental Defense Center.
11 And we also work with CAPE on some of the issues
12 raised by this proceedings.

13 I just have a very brief comment. I'm
14 somewhat concerned by the Chairman's earlier
15 remarks about how soon the final set of hearings
16 can be conducted.

17 I guess I share some of Duke's concerns
18 about having sufficient time to review what we
19 perceive to be the centerpiece of these
20 proceedings, and that's the aquatic impacts.

21 So, I would urge the Committee to allow
22 sufficient time for us to be able to do our
23 analysis, reminding the Committee that, as Pam
24 said, we do have limited resources. So what might
25 be possible for a large corporation to accomplish

1 in a short time would necessarily take us a great
2 deal longer, due to our limitations.

3 And I'm sure that other members of the
4 public who are following these proceedings very
5 closely share those sentiments.

6 PRESIDING MEMBER MOORE: Thank you,
7 counselor. Just so that I'm clear on the record,
8 when I was discussing those dates what I was
9 trying to do was to imagine what the timelines
10 broke down to as far as the minimums go.

11 In no way am I proposing to abrogate
12 anyone's time that they would need to study these
13 things. I'm just trying to get the minimum
14 constraint timeline down.

15 That's, I think, pretty normal in trying
16 to imagine how much the realistic time is going to
17 be. Because we always add on extra time to review
18 after that.

19 Does EDC have any other comments that
20 you want to put on the record? Can you comment
21 about what's ready for, and we're talking here
22 about what's ready for discussion in the December
23 hearing dates.

24 MR. NAFICY: No, actually I want to make
25 it clear that EDC is not, you know, is not

1 representing itself here, so we don't have a
2 position separate than that of CAPE's. And, you
3 know, we agree with what has been stated here.

4 I guess I'll accept your invitation and
5 add my voice to the chorus of let's not piecemeal
6 the hearings. I mean I clearly see that the air
7 quality, noise, visual, vibrations, all of these
8 things are going to be raised again in the context
9 of mitigation for -- you know, mitigation measures
10 that may be proposed.

11 So I definitely urge the Committee not
12 to piecemeal these analyses.

13 PRESIDING MEMBER MOORE: Okay. Well, I
14 appreciate that, and as I indicated earlier, we'll
15 make a decision about how to proceed after we've
16 gotten everyone's opinion on each one of these
17 areas on the record. And I'll discuss it with my
18 staff and we will render an opinion forthwith.
19 And I promise you it will be very rapid because
20 obviously time is of the essence here. So, we
21 won't have long to wait to find out what the
22 outcome is.

23 What Mr. O'Brien is passing out to you
24 is a cheat-sheet, if you will, for me to be able
25 to use to try and discuss these issues and get

1 enough information about what witnesses would come
2 on, as you know it today. Or the topics that are
3 ready or not, as we know it today. To be able to
4 help understand how to form up and determine the
5 hearings.

6 Based on the FSA, it would look as
7 though we have 16 potential topic areas that could
8 be heard in the December 17th to 19th period. And
9 we have a possibility for concurrent filing of
10 testimony and exhibits on December 10th.

11 We may have a second prehearing
12 conference after that. My guess is that if we
13 truncated the list of what we had intended to
14 discuss in those days at all, we would substitute
15 in there at some point another prehearing
16 conference here to do what we are doing today.
17 And have a better idea of how much could be
18 discussed, or decided in the January period.

19 So, to use the sheet that we've passed
20 out, we're going to try and determine whether or
21 not there's a dispute at all on any of these
22 topics. Whether witnesses will be presented; the
23 nature and number of the witnesses. And whether
24 or not we can expect cross-examination in any of
25 those areas.

1 So, for each topic area I'll proceed in
2 this order. I'll ask the applicant, then the
3 staff, and then the intervenors to comment on each
4 area. And if we can come to an agreement on those
5 areas where there's no dispute, and there's no
6 wish to cross-examine any other witness, we may
7 accept testimony by declaration in those areas.
8 So I want you to be clear that that is a
9 possibility, and obviously it makes the job of
10 trying to adjudicate this a little bit easier from
11 our end.

12 What that means is that there wouldn't
13 be any witnesses appearing in the public hearings
14 on that.

15 So, let's start out with this, and again
16 I want to make sure this is all on the record, and
17 is as complete as possible. So, it is likely to
18 be a bit repetitive. And that's simply going to
19 come with the territory.

20 So, let me turn then to project
21 description as the first topic. And, Mr. Ellison,
22 would you give us your views?

23 MR. ELLISON: As I mentioned we think it
24 would be logical to begin the hearings with
25 project description. We will be filing testimony

1 in this area, as we will in every area. And Mr.
2 Trump and Mr. Cochran, as listed here, are our
3 witnesses, and the 20-minute timeframe is about
4 what we estimate for the direct testimony.

5 We think it would be a good idea for the
6 Committee and for all parties to begin with an
7 overview of the project as a whole, because it
8 sets the context for everything that would come
9 after that.

10 With respect to cross-examination time,
11 we do not have any disputed issues with the staff.
12 We did reserve, I believe, five minutes just on
13 principle on cross-examination. But this is a
14 topic, with respect to the staff testimony, that
15 we would be willing to accept by declaration if
16 there are no cross-examinations from other
17 parties.

18 PRESIDING MEMBER MOORE: Thank you. For
19 staff?

20 MS. HOLMES: We're at a little bit of a
21 disadvantage compared to the other parties since
22 we haven't seen anybody's testimony. So it's
23 pretty difficult for us to know whether or not
24 we're going to need to conduct cross-examination.

25 I wouldn't anticipate that we would have

1 cross-examination on project description. And I'd
2 like to raise, I don't know if this is the
3 appropriate time or not, but it has to do with the
4 fact that Duke specifically mentioned in their
5 prehearing conference statement that they wanted
6 to reserve time to respond to things that staff
7 had filed.

8 And this raises the question of rebuttal
9 testimony, rebuttal on the stand. And I think it
10 might be appropriate at some point, I don't know
11 if this is the right time or not, to address the
12 extent to which you're going to allow parties to
13 provide rebuttal.

14 It's of particular interest to staff, of
15 course, because we always have to go first, and
16 other people get a chance to rebut what we say
17 when they file their prefiled testimony, whereas
18 we don't.

19 So, I'd like to have a sense before we
20 get into time estimates for both direct and for
21 cross, as to what kind of parameters the Committee
22 is going to be using to address the rebuttal
23 issue.

24 MR. ELLISON: Commissioner, if I can
25 just say something quickly since a reference was

1 made to our prehearing conference statement on
2 this question.

3 We are in the same position that all
4 parties are in with respect to not having seen
5 anything other than the FSA. Obviously we haven't
6 seen any testimony from other parties, and they
7 haven't seen our testimony.

8 The reference that we made was not to
9 further rebuttal to the staff. Our prefiled
10 testimony on the 7th will address in the entirety
11 the FSA. We did make a reference to say that in
12 identifying disputed issues that we have with the
13 FSA, we broke them into two categories.

14 One of those being areas where we
15 believe there are differences of opinion about the
16 conditions of certification, and we listed those
17 in some detail in our prehearing conference
18 statement.

19 But in addition to that we have a number
20 of what I would describe as questions of
21 clarification with the staff, just confirming that
22 we're reading the condition correctly.

23 And in a couple of cases, minor changes
24 to either the text of the FSA, or things that I
25 wouldn't characterize as disputed issues.

1 We did reserve the right to raise
2 further issues if it turns out that in our request
3 for clarification we learn that we're reading the
4 condition incorrectly, and that the staff has a
5 different interpretation of it than we do. There
6 is the possibility that there is an issue out
7 there that we are, at present, unaware of, and
8 that would be revealed in that clarification
9 process.

10 But I want it to be clear that with
11 respect to the staff we were not attempting to
12 reserve rebuttal time, other than making a
13 reference to the need to clarify.

14 With respect to other parties'
15 testimony, CAPE's, City of Morro Bay and whoever
16 else, obviously we will not be able to address
17 their testimony in our prefiled testimony on the
18 7th, as they will not be able to address ours.
19 And so I think it would be appropriate for the
20 Committee to allow witnesses on the stand orally
21 to comment upon other parties' testimony that has
22 been previously filed.

23 I think that would make a more complete
24 record and make it easier for the Committee to
25 understand where the disputes lie.

1 PRESIDING MEMBER MOORE: That's not
2 strictly in the category of rebuttal. Ms. Holmes,
3 do you want to comment on or react to what Mr.
4 Ellison just said?

5 MS. HOLMES: Well, I think what he said
6 makes a lot of sense. I think what he's getting
7 at basically is the point that if there's a
8 response that's filed testimony to your own
9 testimony, you don't have a chance to react to, or
10 explain to the Committee why the response is
11 incorrect, or has a perspective that's not the
12 same as the party whose testimony is being
13 challenged.

14 I think it's fair to give people a brief
15 opportunity on the stand. It's unfortunate when
16 those kinds of situations stretch out and lots of
17 new information comes in and nobody's had a chance
18 to see it.

19 I'd like to see some sort of limitations
20 placed on that, but I do think it's appropriate to
21 allow parties to have a chance to respond to
22 rebuttal to their testimony. I don't know whether
23 it's a time limit, or whatever method the
24 Committee thinks is appropriate. But I'm in
25 agreement with Mr. Ellison on that point.

1 PRESIDING MEMBER MOORE: So am I. And
2 what I had planned to do was to be as liberal as
3 possible on the rebuttals that were allowed.

4 What I don't intend to do is to allow an
5 entire argument to be restated. So, where there
6 is a proper, or clarification, and I guess I want
7 to tease apart the idea of a clarification or, as
8 Mr. Ellison just said, a different interpretation
9 where there seems to be a disagreement about what
10 someone has said and what it implies about --
11 well, we can take the topic of project
12 description, for instance.

13 If the applicant says, this is our
14 intention; and there's a different interpretation
15 about how that might be implemented. Then I would
16 expect the parties to put that on the table and
17 say, even though it's stated thusly, in fact, we
18 interpret it to mean something quite different.

19 So I take that as a different category
20 than a rebuttal. And I would allow that, in fact,
21 I would expect it because it puts the perspective,
22 especially of staff and the intervenors, on the
23 record as to why they interpreted something
24 differently.

25 I would then turn to applicant and ask

1 them to clarify what that was, what they meant and
2 where we might be able to tease apart a
3 disagreement, or a misunderstanding. We'll try
4 and do it in the description or in the
5 presentation of testimony.

6 For the rebuttals, especially as you've
7 indicated where the time limit is really not
8 sufficient to allow proper consideration of this
9 ahead of time, I'm going to be as liberal as I can
10 with allowing rebuttal testimony. And where it
11 looks like it's getting out of hand, I'm reluctant
12 to put an arbitrary time limit on it.

13 And in fact, I'm going to reserve the
14 right to simply talk to the presenters and ask
15 them to shorten up, or ask them to come back to
16 point, and we'll try and do it that way, as
17 opposed to trying to establish a rigid standard.

18 I think I'd rather -- and I'm just going
19 to ask everyone to indulge me with that. I'll
20 make rulings from the chair in order to try and
21 guide this along. But I'll be as liberal and as
22 expansive as I can to make sure that the record's
23 complete. But I sure appreciate you bringing that
24 one up.

25 With regard to cross, recross and direct

1 testimony, we'll use pretty standard rules on
2 that. And to the extent that I can keep the terms
3 straight, which on occasion I've found myself in
4 redirect and recross and not known where I was.
5 But thanks to having myself surrounded by counsel,
6 I'm usually put back on the track very rapidly.

7 Mr. Ellison.

8 MR. ELLISON: Just one further comment
9 in the nature of suggesting a rule that the
10 Committee might apply to what's appropriate
11 rebuttal and what isn't.

12 I think the appropriate rule, which the
13 Commission has applied in other proceedings, is
14 just to ask the question what are the testimony
15 that would come in orally, and that by its nature
16 would have a certain element of surprise to it,
17 could reasonably have been included in the
18 parties' prefiled testimony.

19 And if the answer is that it could have
20 been, then I think the Committee should be very
21 strict in not allowing parties to surprise other
22 parties on the witness stand with oral testimony.

23 But on the other hand, if there is a
24 circumstance, and there will be circumstances,
25 where parties are responding to testimony that was

1 filed for the first time the same day their
2 testimony was filed, or after their testimony was
3 filed, in the case of the staff, then I think, as
4 Ms. Holmes has recognized, and I think everybody
5 recognizes, there is a need for the Committee to
6 allow parties to briefly present their point of
7 view in response.

8 Let me add one further thing to that.
9 Obviously, we all have the staff's part one FSA.
10 And so certainly I think parties should be
11 responding to that in their prefiled testimony.

12 With respect to the applicant's
13 testimony, I think it's important for everyone to
14 recognize that the vast majority of the
15 applicant's testimony will simply be putting into
16 the record the application for certification, the
17 response to data requests, and the volumes of
18 information that have been docketed in this
19 proceeding by the applicant.

20 So, although our testimony is coming in
21 for the first time technically on the 7th, parties
22 should be -- the entire discovery process has been
23 all about identifying what our position is on
24 these issues.

25 And so I think parties should be very

1 capable of addressing what we're going to say on
2 the 7th in their direct testimony.

3 PRESIDING MEMBER MOORE: Fair enough,
4 and you raise two interesting points. But first
5 of all, let me just say even though in any
6 community where a power plant is proposed there
7 are likely to be often deeply felt feelings about
8 whether or not it's appropriate to be there;
9 whether its design is appropriate; whether or not,
10 in fact, changes are or should be instituted in
11 design if it's ever approved.

12 And very deep divisions can happen
13 within a community, and I understand that.
14 However, these hearings are not adversarial, and
15 won't be conducted in that kind of air. These are
16 evidentiary hearings; these are designed to get as
17 much factual material on the table as possibly
18 can.

19 And while I would tell you straight up
20 that I'm not unaware or inattentive to the
21 community feelings that go on, this is a place to
22 air facts and opinions about those facts, as
23 opposed to being some type of adversarial
24 proceeding where people attack each other
25 personally or attack motives personally.

1 And so as we go along I'll tell you
2 ahead of time that simply won't be allowed,
3 period. It's not going to happen in any kind of
4 proceeding that I run. So if anyone's got any
5 personal vindictiveness that they want to express
6 about any of the actors on either side, it's going
7 to have to be done outside this room, or outside
8 whatever room we're meeting in, because I simply
9 won't allow that kind of testimony to go on the
10 record.

11 The second thing, with regard to Mr.
12 Ellison's point about bringing new things up, I
13 think is reasonably well founded. And it leads us
14 to the idea that a great deal of the testimony
15 will actually, in fact, be documents or approvals
16 or certification that have been filed and obtained
17 in other forums.

18 And as a consequence, for instance, the
19 air quality permits will have come from another
20 agency. But I do, in getting those on the record,
21 I do expect a fair and succinct summary of what
22 they entail.

23 So, for our record here, I don't expect
24 people to simply file the document and say, well,
25 this is it, and it comprises an approval. I think

1 for the record and for the benefit of the public
2 who are involved, it will be appropriate to have a
3 clear and succinct summary of what's contained in
4 those permits as it comes forward to us.

5 Go back to then -- any other comments
6 from staff, Ms. Holmes?

7 MS. HOLMES: No.

8 PRESIDING MEMBER MOORE: Thank you. To
9 the intervenors? Let me go to the City. Counsel.

10 MR. SCHULTZ: Yes. Without waiving our
11 previous objections to any hearings --

12 PRESIDING MEMBER MOORE: Of course.

13 MR. SCHULTZ: -- moving forward and
14 preserving that right, with regards to project
15 description, it's our hope that before any
16 hearings would be held we could get the key terms
17 of the agreement to lease that's been worked out
18 between the City and Duke included in that project
19 description, if necessary, there are some key
20 terms in there that I think need to be included in
21 the project description.

22 So we don't see there being any need for
23 cross-examination, but we do want to reserve that
24 right. But it would be very short and we'll be
25 filing our written testimony beforehand, also, as

1 to which key terms and conditions should be
2 included in the project description.

3 PRESIDING MEMBER MOORE: How much time
4 do you think you're going to expect --

5 MR. SCHULTZ: Ten minutes.

6 PRESIDING MEMBER MOORE: And staff, I
7 forgot to ask you what kind of time you estimated
8 on the first topic.

9 MS. HOLMES: We gave a general estimate
10 for direct for five minutes; that's typical and
11 will apply to areas where we're not expecting to
12 do any sort of rebuttal on the stand. I would
13 hope that project description would be one of
14 those.

15 PRESIDING MEMBER MOORE: I hope. All
16 right.

17 (Laughter.)

18 PRESIDING MEMBER MOORE: Although, and I
19 was trying to come in through the back door on
20 this, there may be different interpretations of
21 what's presented, so I'm trying to make sure I
22 allow for that, so I've put you down for --

23 MS. HOLMES: Since our testimony is out
24 for the longest of anybody's I don't really feel
25 like we need to necessarily summarize it in any

1 great detail.

2 PRESIDING MEMBER MOORE: All right,
3 well, then I'm going to assume that whether we
4 need it or not, that there's a limited cross in
5 each case, so I'm going to assume that it's 20
6 minutes to a half an hour of cross for the topic
7 in this case.

8 For the intervenors, CAPE, on project
9 description?

10 MS. SODERBECK: We did raise an issue
11 with respect to project description in terms of
12 getting a consistent operating life for the plant.
13 It varies within the FSA, itself, and I think it's
14 something that's necessary in order to make the
15 CEQA analysis, to know how long this is really
16 going to be here, and when we might expect another
17 CEQA analysis if they go beyond that.

18 And on another point that was raised
19 with respect to the new information, I would like
20 to point out that the applicant has had most of
21 its information in, as Mr. Ellison noted, and
22 staff does.

23 But we're in the position of having to
24 get our information together. And even the
25 December 7th deadline will be very difficult for

1 us to meet with respect to the issues we've
2 already identified, just because of when we got
3 the FSA, we barely got our preconference statement
4 in.

5 So, we may not get every item of
6 information and testimony that we expect by the
7 December 7th deadline. And we would like some
8 leeway to be able to add to that.

9 I don't think, you know, unless there's
10 some huge surprise that there will be different
11 issues than we described.

12 PRESIDING MEMBER MOORE: Well, that's
13 the whole reason to go through this issue list, is
14 to try and get an idea of what those are. So,
15 let's stay with project description for a second.

16 And, again, I'm trying to imagine an
17 organized set of hearings, and I'm trying to see
18 what kind of time is involved. Do you expect to
19 spend any time at all and dispute the project
20 description as it's likely to be presented?

21 MS. SODERBECK: I think there will have
22 to be some testimony as to what exactly the
23 operating life that's being assumed, that all the
24 analysis about the other subject areas then follow
25 from.

1 Whether we're talking about a project
2 that's going to be 25, 30, 50, indefinite. It
3 makes a difference obviously when you're analyzing
4 significant impacts and the appropriate mitigation
5 alternatives, to know exactly how long that plant
6 is purporting to be there, operating.

7 PRESIDING MEMBER MOORE: Are you
8 planning to bring a witness on that?

9 MS. SODERBECK: I think we would have to
10 rely on cross-examination of Duke witnesses.

11 PRESIDING MEMBER MOORE: All right.

12 MS. SODERBECK: And the other thing with
13 respect to project description is that -- will be
14 raised as a mitigation alternative, I think the
15 project description will change dramatically if
16 there's a dry cooling proposed, and if the City
17 and Duke, in fact, have not come to agreement on
18 the outfall -- means that Duke is missing a key
19 component of the whole project.

20 So those areas all need, I think, to be
21 addressed in the basic project description.

22 PRESIDING MEMBER MOORE: Okay. Let's go
23 to compliance. And turn to Mr. Ellison on
24 compliance. How much time and will you be
25 providing a witness?

1 MR. ELLISON: We will be providing a
2 witness on compliance issues, which at the time I
3 expect would be Mr. Trump; perhaps in combination
4 with Mr. Hoffman.

5 The principal issue that we have for the
6 compliance we identified in our prehearing
7 conference statement as a matter of the general
8 conditions in the FSA.

9 We are in agreement with the City that
10 the -- not necessarily all of agreement to lease,
11 but certainly there are many important provisions
12 of the agreement that we have reached with the
13 City that should be reflected in the Commission's
14 decision.

15 And among those are some very important
16 agreements that we have with the City regarding
17 milestones for when things will occur. This is a
18 complicated project. It involves the tearing down
19 of the tank farm; remediation of the site before
20 we can begin what the Commission would normally
21 consider construction. And the construction of
22 the combined cycle facilities. Then the
23 demolition of the existing project, et cetera.

24 And we have negotiated at great length
25 agreements with the City on what will occur; when

1 it will occur; and those sorts of things. And we
2 think it's important for the Commission's
3 compliance portion of the decision to be
4 consistent and reflect the agreements that we have
5 with the City on those issues.

6 PRESIDING MEMBER MOORE: And, Mr.
7 Ellison, are you expecting that agreement to be
8 complete by the December 17th hearings?

9 MR. ELLISON: The agreement to lease, as
10 far as we are concerned, and I believe the City
11 would agree on this, is complete now, subject to
12 the Council needing to see the final portions of
13 the FSA, review those and consider those prior to
14 any final document in order to insure compliance
15 with CEQA.

16 The document has been completely
17 negotiated down to the dotted i's and crossed t's
18 as far as we're concerned. It's done. There is
19 an important attachment to the agreement to lease,
20 that is the lease, itself.

21 Let me back up. The agreement to lease
22 is an agreement to enter into a lease in the
23 future when the existing lease expires. And so
24 attached to the agreement to lease is the new
25 lease, itself.

1 And we are still working with the City
2 on the lease, itself. But the lease, itself, is
3 not the document that contains mitigation
4 measures, tear-down schedules, all of the things
5 that I've been talking about.

6 All of that is in the agreement to lease
7 which we think is certainly ready for the
8 Commission's consideration; fully negotiated; and
9 the Commission can reflect it in the decision that
10 you will make.

11 We will be sponsoring testimony. We
12 hope to work with the City on a potential
13 stipulation as to the specific provisions of the
14 agreement to lease that the City and Duke agree
15 should be incorporated by the Commission.

16 PRESIDING MEMBER MOORE: I've allowed 30
17 minutes for that. Is that sufficient time?

18 MR. ELLISON: I think that's fine. I
19 don't think it's going to take a long time for us
20 to present this, but I do want to highlight the
21 importance of the issue and our agreement with the
22 City on the general principle that the
23 Commission's decision needs to be consistent and
24 reflect the provisions of the agreement to lease
25 that are not just purely financial arrangements,

1 real property arrangements between the parties.

2 PRESIDING MEMBER MOORE: You expect to
3 reserve time for cross-examination on that? Do
4 you anticipate that need?

5 MR. ELLISON: With respect to the staff,
6 I'm assuming that the staff does not object to
7 consistency with the agreement to lease. I don't
8 think we would have any cross-examination. If
9 staff does dispute that, then we might have some.

10 With respect to the City I think we're
11 in agreement on these issues. I don't see any
12 there. And obviously we haven't seen positions of
13 any other parties, and I can't comment on that.

14 PRESIDING MEMBER MOORE: Staff counsel.

15 MS. HOLMES: With respect to the
16 agreement to lease issue we had a number of
17 discussions about this early on. And staff is of
18 the opinion that it would be inappropriate to
19 include conditions from the agreement to lease
20 unless they relate to specific environmental
21 impacts that need to be mitigated or are necessary
22 for compliance with local laws.

23 And the reason for that is that we've
24 got a compliance unit that's already extremely
25 busy. And they believe it's neither desirable nor

1 appropriate for them to be responsible for
2 enforcing conditions that don't have anything to
3 do with those two topic areas.

4 So, to the extent that the agreement for
5 lease contains conditions that are relevant to
6 staff's conclusions or environmental impacts,
7 mitigation, compliance with local laws, we have
8 referenced those in the conditions of
9 certification.

10 But above and beyond that we have some
11 concerns about the Commission including them in
12 the decision, just because of the resource issues
13 associated with that.

14 PRESIDING MEMBER MOORE: Do you not
15 think that we should be apprised of that in the
16 hearing process, that the Committee ought to be
17 hearing what steps the City and the applicant are
18 taking together to try and arrive at a compliance
19 schedule, or arrive at other mitigation measures
20 that might be appropriate within this local
21 community? That we ought to hear that on the
22 record and under this topic?

23 MS. HOLMES: Right. The next point I
24 was going to make was that although we hadn't
25 originally considered compliance to be a contested

1 topic, it may well end up being, then, as a
2 result.

3 PRESIDING MEMBER MOORE: Right. So, in
4 that context, would you expect that you would have
5 cross-examination of this? I mean you'll
6 obviously have an opinion. I'm assuming you've
7 seen the agreement to lease already.

8 MS. HOLMES: We've seen more drafts than
9 we've cared to read.

10 (Laughter.)

11 PRESIDING MEMBER MOORE: But you did
12 read them?

13 MS. HOLMES: Yes, we have.

14 PRESIDING MEMBER MOORE: Than you cared
15 to read, but you did, of course. Okay.

16 MS. HOLMES: And as I said, it's my
17 understanding that technical staff, to the extent
18 that there were terms in the agreement to lease
19 that were relevant to their conclusions within the
20 individual technical areas, they were referenced
21 and incorporated by referencing to the proposed
22 conditions of certification.

23 Above and beyond that we're going to
24 have issues. But I guess what we need to do is to
25 see something in writing from the City and from

1 Duke, and there may be differences as between
2 those two parties as to what's appropriate, and
3 we'll be able to respond.

4 So, I guess we'll be conducting cross-
5 examination. I can't say, though, seeing that
6 whether we want some, you know, additional time
7 for rebuttal on the stand as we go forward.

8 PRESIDING MEMBER MOORE: Well, I think
9 one of the things I would expect from staff is
10 that if you look at the agreement to lease and you
11 find that there are conditions in there that in
12 some way upset or run counter to what the rest of
13 the staff has concluded in their own compliance
14 conditions, that we hear it up front and early on,
15 under this topic.

16 It would be, I think, appropriate to
17 hear your first shot at it. And, as a
18 consequence, my guess is this is going to be a
19 little more complex than it would appear on the
20 surface. So I'm going to reserve time for cross-
21 examination on this topic, because I have a
22 feeling you're going to need it.

23 MS. HOLMES: Let me just briefly state,
24 I don't know that -- I'm not aware of any terms
25 that are in the agreement to lease that are in

1 conflict with conditions of certification.
2 There's just a question of whether or not they are
3 appropriate to include in the Commission's
4 decision.

5 PRESIDING MEMBER MOORE: Well,
6 understood, and I appreciate that. I think partly
7 what I want to use this time for, when we have
8 this topic come up, is to sort of sort out and
9 even the playing field.

10 I think it's going to make it easier
11 when we get into compliance conditions later on to
12 have had a discussion up front and eliminate some
13 of the potential conflicts.

14 MR. ELLISON: Can I make one comment in
15 response --

16 PRESIDING MEMBER MOORE: Mr. Ellison.

17 MR. ELLISON: We are sensitive to what
18 the staff is saying about the fact that the
19 agreement to lease does contain provisions that
20 are purely commercial arrangements between the
21 City and Duke, such as the amount of payment for
22 the lease is a good example of that.

23 That are not jurisdictional to the
24 Energy Commission, and that the compliance unit of
25 the Energy Commission, it would be inappropriate

1 to ask them to enforce that.

2 But what we are talking about -- at
3 least as Duke, the City can make their own
4 comments -- is that there are a number of
5 provisions in the agreement to lease that do go to
6 mitigation, that are directly relevant to
7 conditions of certification already in the staff's
8 FSA. And that we believe are not consistent with
9 what is in the FSA now.

10 And that have not been appropriately
11 reflected, either because they haven't been
12 mentioned when they're relevant; or in some cases
13 there are provisions that we think are directly
14 contradictory. And the milestones provisions is
15 an example of the latter, for example.

16 A great deal of time has been put in by
17 the City and Duke and other parties in bringing
18 you an entirely different project than the one
19 that Duke originally proposed. And those
20 agreements are very important to the City. I know
21 they're very important to us.

22 And to the extent they are within the
23 jurisdiction of the Commission and are addressed
24 already, we think it is very important that they
25 be, that there at least be consistency and not

1 incorporation by reference.

2 PRESIDING MEMBER MOORE: Right. And so
3 I think the time that we're allotting, I'm going
4 to schedule staff for 20 minutes on this item, and
5 assume that there will be a rebuttal -- I'm sorry,
6 a cross-examination.

7 MS. HOLMES: Is the 20 minutes for
8 direct or for cross?

9 PRESIDING MEMBER MOORE: That's direct.
10 And we'll reserve cross, I'm going to assume, as a
11 rule of thumb, try and use half of what the direct
12 is allocated as a marker for cross-examination;
13 try not to exceed that number. So just a rule of
14 thumb.

15 In other words, if you have 20 minutes
16 in your direct presentation, for my own notes in
17 trying to reserve time, I'm saying, okay, half of
18 that is the appropriate amount of time that we
19 would allocate. It's not an attempt to hold you
20 to that, but just for planning purposes I'm trying
21 to imagine how much time is used.

22 For the City? Counsel.

23 MR. SCHULTZ: Yes. For the City, we're
24 delighted to hear that Duke is committed on
25 incorporating the agreement to lease. That's been

1 our big dilemma in our prehearing conference
2 statement. Really our main purpose to intervene
3 is that from review of the FSA it did not
4 incorporate the key terms to the agreement to
5 lease that we need in there.

6 And as the agreement to lease is only a
7 concept document, it hasn't been approved by the
8 Board of Directors from Duke, we were very
9 concerned that we've got only a concept agreement
10 to lease, and we don't have anything that we
11 consider necessary on the key subjects in the FSA
12 and conditions of certification.

13 So, we're very hopeful that over the
14 next couple of weeks we can iron out which
15 conditions that are in the agreement to lease can
16 be incorporated into these conditions of
17 certification.

18 I think if we can accomplish that, it
19 might be a very quick time that the City is an
20 intervenor in these proceedings. Because that's
21 our ultimate goal is to make sure that the key
22 terms are that one way to do it is to incorporate
23 those key terms into the conditions of
24 certification. The other way to do it is to get
25 the outfall lease agreement, which is the

1 attachment, get that completed, approved by Duke.

2 Although the City cannot approve the
3 agreement to lease, outfall lease, until the
4 entire FSA is done pursuant to CEQA, there is
5 nothing preventing the Duke Board of Directors
6 from approving the agreement to lease and the
7 outfall lease.

8 And that would give us coverage if both
9 those agreements were approved. So, we would
10 still ask for 20 minutes of cross-examination in
11 this area, and we're hopeful we can resolve our
12 issues prior to that time.

13 PRESIDING MEMBER MOORE: Well, I hope
14 you can, too. And I've no comment on whether Duke
15 would want to precede you in that signature or
16 not. I'm going to leave that to the parties.

17 CAPE.

18 MS. SODERBECK: This is an issue that
19 we've been at a total loss to deal with because
20 the negotiations on the lease have been going on
21 with the City and Duke directly. And for the most
22 part, they are not made public, even in City
23 Council forum in Morro Bay, until after the fact,
24 shall I say.

25 So, I don't have any idea what's in the

1 lease at current -- at present. And we may or may
2 not have disputes once we see the lease in
3 connection with the general conditions that have
4 been proposed.

5 But as of right now, I would say we have
6 nothing, but we may have a lot.

7 PRESIDING MEMBER MOORE: Let's be clear
8 on what the forum is on this. If you have
9 disagreements on the lease, itself, your fight may
10 be with the City. And the --

11 MS. SODERBECK: I understand, --

12 PRESIDING MEMBER MOORE: -- proper forum
13 there is with the City Council who will be ably
14 represented here by city attorney or other counsel
15 in presenting that view. But, --

16 MS. SODERBECK: That's not what I'm
17 going to. I'm addressing the issue of what should
18 be in the conditions vis-a-vis the lease. I
19 really don't know because we don't know what the
20 lease says.

21 PRESIDING MEMBER MOORE: Right. Again,
22 those are, just so we're sort of presaging where
23 we're going here, the questions of whether it's a
24 proper lease or whether proper conditions are in
25 there will be of interest to you via the City

1 Council.

2 MS. SODERBECK: Not the conditions in
3 the lease. But how they relate to the general
4 conditions in terms of the compliance.

5 PRESIDING MEMBER MOORE: Okay.

6 MS. SODERBECK: We do have a copy of
7 those in the FSA and we know what those are. But,
8 we don't know how they relate to the lease. And I
9 don't really foresee that they would be much of an
10 issue for us, but until that happens we just have
11 no background information on it.

12 PRESIDING MEMBER MOORE: All right, I'm
13 going to assume that it's a time element that it
14 will not exceed any of the other parties,
15 especially since they're the parties of interest
16 in this. I think that would probably be
17 inappropriate to have more time than they have.

18 MS. SODERBECK: I agree.

19 PRESIDING MEMBER MOORE: All right.
20 Let's go on then to facilities design. And I
21 suggest this is probably uncontested; or at least
22 you see by the notes that we've put down.

23 But, I've been known to be wrong before,
24 so let me turn to the applicant and ask for your
25 comments on the question of actual facility

1 design. And your witnesses that you anticipate.

2 MR. ELLISON: As far as we know it is
3 uncontested, and would be appropriate for
4 submission by declaration.

5 PRESIDING MEMBER MOORE: Staff?

6 MS. HOLMES: Staff concurs.

7 PRESIDING MEMBER MOORE: All right.
8 City?

9 MR. SCHULTZ: The City would concur with
10 that.

11 PRESIDING MEMBER MOORE: All right.
12 CAPE?

13 MS. SODERBECK: The only note we made in
14 our statement with respect to the facility design
15 was that to the extent it may be impacted by
16 enclosure issues that are raised by the Coastal
17 Commission Staff, and I don't know that that will,
18 in fact, be the case.

19 I think there are areas which, you know,
20 we may have some questions. But again, that's now
21 it sounds like a part -- well, I'm not sure which
22 part we're in, in terms of the discussion, on
23 whether there should be enclosure or not.

24 But I think that's the only area that we
25 see that could affect it, and that, in turn, may

1 affect other analyses under air and noise and
2 things of that sort.

3 PRESIDING MEMBER MOORE: All right.
4 Under efficiency, to the applicant. Ten minutes?

5 MR. ELLISON: We have no disputed issues
6 with respect to efficiency.

7 PRESIDING MEMBER MOORE: And you have
8 two witnesses that you'll be sponsoring?

9 MR. ELLISON: That's correct.

10 PRESIDING MEMBER MOORE: Staff?

11 MS. HOLMES: We not aware of any
12 contested issues, although I believe CAPE probably
13 wants to cross-examine our witness on efficiency.

14 PRESIDING MEMBER MOORE: Okay. And so
15 you have no plans for cross-examination --

16 MS. HOLMES: No.

17 PRESIDING MEMBER MOORE: -- on your
18 part? And you have two witnesses?

19 MS. HOLMES: I guess so. I don't have
20 it in front of me.

21 PRESIDING MEMBER MOORE: -- and Minetto?

22 MS. HOLMES: Yes, that's correct.

23 PRESIDING MEMBER MOORE: And, counsel,
24 what would you expect for time, 15 minutes?

25 MS. HOLMES: No, for direct I would

1 expect it would be extremely short, five minutes.

2 PRESIDING MEMBER MOORE: Five minutes.

3 MS. HOLMES: I think most of -- I think
4 they're going to take questions from CAPE, but I
5 don't think there will be a need to present
6 rebuttal as they take the stand.

7 PRESIDING MEMBER MOORE: Okay. City?

8 MR. SCHULTZ: The City does not expect
9 any cross-examination or to present any witnesses
10 in efficiency.

11 PRESIDING MEMBER MOORE: Okay. CAPE?

12 MS. SODERBECK: We don't plan to present
13 any witnesses on our own, but we do want to cross-
14 examine the staff expert in this area; and perhaps
15 Duke's people on this.

16 PRESIDING MEMBER MOORE: Okay. Let's go
17 to reliability. My notes would suggest that this
18 is uncontested. For the applicant, Mr. Ellison?

19 MR. ELLISON: That's correct from our
20 point of view.

21 PRESIDING MEMBER MOORE: Ten minutes for
22 your -- you have two witnesses sponsored.

23 MR. ELLISON: That's correct. When we
24 say we have two witnesses, by the way, the
25 testimony will be jointly sponsored; they won't

1 necessarily have to appear sequentially. And it
2 does not at all preclude taking testimony by
3 declaration.

4 PRESIDING MEMBER MOORE: Understood.
5 Staff?

6 MS. HOLMES: Staff would be happy if
7 this area was taken by declaration.

8 PRESIDING MEMBER MOORE: All right.
9 City?

10 MR. SCHULTZ: The City agrees.

11 PRESIDING MEMBER MOORE: All right. And
12 the intervenors?

13 MS. SODERBECK: The Alliance agrees, as
14 well.

15 PRESIDING MEMBER MOORE: All right.
16 Geology and paleontology, for the record, to the
17 applicant?

18 MR. ELLISON: We do not have any
19 disputed issues in this area, subject again to our
20 point earlier about seeking some clarifications
21 from staff. I make that point generally, by the
22 way, I don't remember whether some of our
23 clarification issues were in this topic or not.

24 But we don't have any disputed issues
25 with respect to staff in this topic.

1 PRESIDING MEMBER MOORE: And staff?

2 MS. HOLMES: Staff thinks that this area
3 would be appropriate to take by declaration.

4 PRESIDING MEMBER MOORE: Thank you. And
5 the City?

6 MR. SCHULTZ: The City agrees.

7 PRESIDING MEMBER MOORE: And the
8 intervenors?

9 MS. SODERBECK: We agree as well.

10 PRESIDING MEMBER MOORE: Okay.
11 Transmission line safety and nuisance. To the
12 applicant.

13 MR. ELLISON: We do not have disputed
14 issues in this topic, either.

15 PRESIDING MEMBER MOORE: So you're
16 willing to take this by declaration?

17 MR. ELLISON: Yes.

18 PRESIDING MEMBER MOORE: Although we
19 have assigned you approximately 20 minutes for two
20 witnesses. Thank you. Staff?

21 MS. HOLMES: Staff would like this area
22 to be taken by declaration.

23 PRESIDING MEMBER MOORE: Okay. And the
24 City?

25 MR. SCHULTZ: The City agrees.

1 PRESIDING MEMBER MOORE: All right. And
2 the intervenors?

3 MS. SODERBECK: This is an area that we
4 think is affected by some of the new information
5 that we've pointed out, specifically how the
6 current environment in terms of terrorist attacks
7 and threats might relate to the -- it's sort of
8 two parts. How it relates to the design, for
9 example, if it should be enclosed. And then if it
10 is enclosed, is that protective enough in terms of
11 worker safety and hitting transmission lines and
12 how you do transmission lines and things of that
13 sort.

14 We don't, at this point, have any direct
15 witnesses on that. But we would probably be
16 talking to Duke Staff about that.

17 PRESIDING MEMBER MOORE: So you'd like
18 to question Duke on it. You do not plan to bring
19 a witness on that item?

20 MS. SODERBECK: That's correct, and
21 probably question staff on whether they've taken
22 into account any of this in the analysis.

23 PRESIDING MEMBER MOORE: Okay.
24 Transmission system engineering. Mr. Ellison.

25 MR. ELLISON: No disputed issues.

1 PRESIDING MEMBER MOORE: Staff?

2 MS. HOLMES: No disputed issues.

3 PRESIDING MEMBER MOORE: Okay. And the
4 City?

5 MR. SCHULTZ: The City agrees.

6 PRESIDING MEMBER MOORE: Okay. And for
7 CAPE?

8 MS. SODERBECK: We've raised a number of
9 issues here. Again, we have no direct witnesses
10 on our own except for Don Boatman. And I don't
11 know personally his availability. He does work
12 full time for a living, and we'd have to find out
13 when he was available.

14 But I would expect an hour of testimony
15 by Don, up to an hour. And cross-examination of
16 the staff and the applicant, I don't know how long
17 that might take.

18 PRESIDING MEMBER MOORE: I'm missing
19 something. Do we have a written submission from
20 Mr. Boatman on this already?

21 MS. SODERBECK: We do not have our -- we
22 have not prepared a declaration by him yet. That
23 would be part of, I think, what we would be doing
24 by December 7th.

25 But it would not be terribly different

1 from what he submitted as an individual in terms
2 of his comments previously submitted on this
3 particular subject matter.

4 PRESIDING MEMBER MOORE: All right.
5 Noise and vibration. Mr. Ellison.

6 MR. ELLISON: We have identified issues
7 in this topic. We think that it therefore would
8 not be appropriate for declaration.

9 We've identified three issues. Let me
10 make a comment with respect to the issue we've
11 identified on noise4. That issue has two parts.
12 The first part concerns the 70 dba steam blow
13 requirement. And I wanted to mention two things.

14 One is that this really falls into -- we
15 could have easily included this in our -- not
16 included it here and included it as a
17 clarification question. We have a clarification
18 question for the staff. And if it's resolved the
19 way that we think it should be, then the first
20 part, the first issue we mentioned here is
21 resolved.

22 Then that would only leave the question
23 about the period of time conformance; we think the
24 period of time during which these activities
25 should be allowed should reflect the period of

1 time allowed by the City ordinance.

2 And that is, again, the similar issue
3 that we have on a couple of other conditions. So,
4 in terms of timing, we would expect -- I forget
5 what estimate we put in our --

6 PRESIDING MEMBER MOORE: Thirty minutes.

7 MR. ELLISON: I think that's probably
8 the right amount for our direct testimony. And I
9 think there will probably be about that same
10 amount for cross.

11 PRESIDING MEMBER MOORE: Okay. All
12 right, and for staff?

13 MS. HOLMES: Staff anticipates the need
14 to do some preliminary, I guess and some rebuttal,
15 when they first take the stand, that as the result
16 of the fact that there's apparently an issue
17 that's contested by several parties. And we
18 haven't seen their testimony yet.

19 In addition, we'd like to reserve time
20 to cross-examine witnesses on the testimony that
21 will be filed on December 7th.

22 PRESIDING MEMBER MOORE: How much time
23 would you anticipate?

24 MS. HOLMES: It's very hard to know
25 without seeing the testimony. I'd say no more

1 than what is granted the applicant.

2 PRESIDING MEMBER MOORE: Okay. The
3 City?

4 MR. SCHULTZ: Yes, we would also be
5 presenting direct testimony in this matter. Bill
6 Dohn, D-o-h-n, would be the City's expert witness
7 in this area. We expect one hour in time on
8 direct. And would reserve 30 minutes on cross-
9 examination.

10 PRESIDING MEMBER MOORE: Mr. Dohn is
11 your City Engineer?

12 MR. SCHULTZ: No, Mr. Dohn is with -- is
13 a consultant with -- is he with SCIC -- he's not
14 with SCIC.

15 PRESIDING MEMBER MOORE: Okay. And the
16 intervenors? On this topic you've got David --
17 down for two hours, in fact.

18 MS. SODERBECK: Yeah, I think we have
19 raised a number of issues here where we would
20 require not only the direct examination, but
21 cross-examination of the Duke witnesses and staff,
22 in terms of noise impacts.

23 And, again, some of this relates to new
24 information that we think should be considered,
25 and we don't think has been.

1 PRESIDING MEMBER MOORE: And you're
2 planning to file that new information?

3 MS. SODERBECK: We've identified it, at
4 least in some detail, in the preconference hearing
5 statement. And we will be addressing it a little
6 more directly in the December 7th filings.

7 PRESIDING MEMBER MOORE: So, I'm unclear
8 as to how much time you think you're going to need
9 based on what you just said. Two hours of direct
10 seems a bit much under the circumstances. Are you
11 implying that this is two hours of total between
12 the direct and what you might do in cross-
13 examination?

14 MS. SODERBECK: Well, never having been
15 a litigator, I haven't had to estimate these
16 things. Perhaps an hour, but I think we are
17 raising more issues that need explanation, shall I
18 say, than the applicant and the staff, since they
19 already have their testimony out, in essence.

20 PRESIDING MEMBER MOORE: All right.
21 Ladies and gentlemen, what we're going to do is
22 take about a ten-minute break right now, and we'll
23 start on the second page of my notes here in ten
24 minutes.

25 (Brief recess.)

1 PRESIDING MEMBER MOORE: We are at the
2 end of a break on the prehearing conference for
3 the Morro Bay Power Plant, we're back in session.
4 And I'm joined, for the record, by Terry O'Brien
5 here at the dais, the Aide for Commissioner Keese.

6 By the way, I'm instructed that the
7 microphones that are vertical are only for
8 recording purposes, so if you're going to use a
9 microphone for amplifications purposes use
10 something that's not pointed toward the ceiling
11 and you'll be fine. Otherwise, these other mikes
12 are recording for posterity.

13 We're going through the list of topics
14 that we're intending to address in the future
15 hearings. And we're going to turn to traffic and
16 transportation. And let me turn to the applicant
17 and ask for comments on witnesses, timing and
18 cross-examination. Mr. Ellison.

19 MR. ELLISON: We have identified two
20 issues in this topic. We think 30 minutes for our
21 witnesses is sufficient to present the testimony.
22 I would anticipate that we would have probably 30
23 minutes of cross-examination for the staff.

24 I do want to emphasize that when I give
25 cross-examination estimates those are only for

1 staff. We obviously haven't seen testimony from
2 the intervenors, and I have no way of knowing what
3 that will be.

4 PRESIDING MEMBER MOORE: Good point.
5 Accepted. Staff, counsel?

6 MS. HOLMES: Thank you. I think that
7 we'd anticipate 20 to 30 minutes of direct
8 testimony. Staff has already started to look at
9 some of the issues that were raised by CAPE with
10 respect to new information. And we'll be prepared
11 to respond to that on the stand.

12 We'd like to reserve the opportunity to
13 conduct cross-examination, but again without
14 having seen people's testimony hard to say. So,
15 30/30 is probably a safe preliminary estimate.

16 PRESIDING MEMBER MOORE: The City?

17 MR. SCHULTZ: Yes, the City would
18 reserve direct and cross-examination. Our direct
19 witness is Steve Orosz, O-r-o-s-z. We would
20 reserve one hour, and 30 minutes on cross-
21 examination.

22 I'd again just state, though, that we do
23 have this issue resolved through our agreement to
24 lease, and once those are incorporated, or if they
25 can be incorporated in the conditions of

1 certification that might do away with all of our
2 issues.

3 PRESIDING MEMBER MOORE: Thank you.
4 Intervenors.

5 MS. SODERBECK: We have identified Colby
6 Crosser as a direct witness on this relating
7 principally to the new developments that we cited
8 in the preconference statement.

9 I suspect it could probably be done more
10 in 30 minutes than an hour, but, again, I'm not
11 terribly experienced at guessing.

12 We would also want to cross-examine
13 staff and perhaps the Duke personnel on that, as
14 well.

15 PRESIDING MEMBER MOORE: Okay. Under
16 waste management, for the applicant? I show this
17 as an area for potential solution by declaration.

18 MR. ELLISON: Commissioner, we have
19 identified waste issues, so we think it's probably
20 not a candidate for declaration.

21 We think we can present our witnesses on
22 this in the 20 minutes allotted here, but we do
23 reserve 30 minutes of cross-examination on the
24 issues.

25 PRESIDING MEMBER MOORE: Okay. Staff.

1 MS. HOLMES: I'll stick with the 30/30
2 estimate on this topic.

3 PRESIDING MEMBER MOORE: Okay. New
4 nomenclature emerging from this. Setting a new
5 standard for the Commission as I leave.

6 For the City, counsel?

7 MR. SCHULTZ: We would reserve 30/30 on
8 direct examination, there could be a possibility
9 we sponsor a witness from IWMA, Bill Worell, and
10 also on the City's behalf would be John Rohr,
11 R-o-h-r, from Conex.

12 PRESIDING MEMBER MOORE: All right. For
13 CAPE?

14 MS. SODERBECK: We have no plans for any
15 direct testimony on this, or cross-examination on
16 anything we've seen so far. But if something
17 should arise in the testimony that's already been
18 identified we may preserve a little bit of cross-
19 exam.

20 PRESIDING MEMBER MOORE: Thank you.
21 Let's turn to hazardous materials and worker
22 safety. Mr. Ellison. Three witnesses.

23 MR. ELLISON: That's correct, we have
24 identified issues in the area of hazardous
25 materials, so we would expect that we would have

1 20 minutes of direct and 30 minutes of potential
2 cross on that issue.

3 PRESIDING MEMBER MOORE: Okay. And for
4 staff, counsel?

5 MS. HOLMES: Thank you. This raises
6 another issue that we probably ought to address
7 before the close of hearing today. Staff has
8 errata to issue to this. There was relevant to
9 the concerns that Duke has raised in its
10 prehearing conference statement on this topic.

11 And we'd like to know whether the
12 Committee wants us simply to file these as we
13 determine that they're going to be appropriate, or
14 do you want us to wait until three days before
15 hearings and submit them at that time?

16 PRESIDING MEMBER MOORE: How many
17 submissions would you anticipate would be coming
18 in if you filed them in sequence?

19 MS. HOLMES: Well, right now we're only
20 aware of one with respect to this particular
21 topic, hazardous materials. If it turns out that
22 the recommendations in the text are not consistent
23 with the conditions of certification, we want the
24 conditions of certification to be amended to
25 reflect staff's actual recommendations.

1 But we can file it immediately, if you'd
2 like.

3 PRESIDING MEMBER MOORE: You know, if
4 it's available to file I think I would prefer that
5 it be filed sooner than later.

6 MS. HOLMES: Thank you. Then we'll file
7 that tomorrow or Monday. And I would think that
8 we would probably need 30 minutes of direct, and
9 potentially 30 minutes of cross.

10 PRESIDING MEMBER MOORE: Okay. All
11 right, and by the way, I seem to have neglected to
12 note that the Coastal Commission representative is
13 on the phone. And I know that he would like to
14 speak on the visual resources, but if there are
15 other matters on which the Coastal Commission
16 wishes to offer an opinion, other than those, then
17 please speak up and we'll include the comments
18 after the City comments, which is the appropriate
19 place.

20 The City comments on hazardous
21 materials.

22 MR. SCHULTZ: Yes, the City would
23 reserve one hour on direct examination. Witnesses
24 would consist of Jeff Jones, who is the Fire
25 Chief, and Jim Hunt from Hunt Research. And we

1 would reserve 30 minutes on cross-examination.

2 PRESIDING MEMBER MOORE: Okay. For the
3 intervenors, CAPE?

4 MS. SODERBECK: We don't anticipate
5 having any direct witnesses, but we would do
6 cross-examination of staff and the Duke personnel,
7 and perhaps City personnel.

8 PRESIDING MEMBER MOORE: All right.
9 Under socioeconomics, for the applicant, you have
10 two witnesses and you're estimating 30 minutes?

11 MR. ELLISON: That's correct,
12 Commissioner. We have identified one issue which
13 relates mainly to consistency, the agreement to
14 lease, as well as consistency with the conditions
15 on traffic and transportation.

16 So at the moment that is a -- I would
17 have to characterize this topic as having a
18 disputed issue. And we would reserve the time
19 that you just mentioned to describe it to the
20 Committee, and I would expect potentially 30
21 minutes of cross-examination.

22 PRESIDING MEMBER MOORE: Okay, thank
23 you. Counsel for staff.

24 MS. HOLMES: I'm going to guess 20
25 minutes for direct, and 45 for cross.

1 PRESIDING MEMBER MOORE: And only two
2 witnesses?

3 MS. HOLMES: That's correct.

4 PRESIDING MEMBER MOORE: Okay. For the
5 City?

6 MR. SCHULTZ: Yes, for the City we would
7 reserve direct and cross-examination. Our direct
8 witness would be Robert Niehaus, and that's
9 spelled N-i-e-h-a-u-s. We expect 45 minutes on
10 direct and 30 minutes on cross-examination.

11 PRESIDING MEMBER MOORE: All right. For
12 the intervenors, CAPE?

13 MS. SODERBECK: We have no direct
14 witnesses on this, but would be cross-examining
15 staff, and perhaps Duke.

16 PRESIDING MEMBER MOORE: All right. On
17 the topic of visual resources, and I'm reminded
18 that we do have the Commission representative on
19 the phone, and I'll come back to him about Mr.
20 Douglas' letter.

21 For the applicant, you have two
22 witnesses, Mr. Ellison?

23 MR. ELLISON: That's correct. We've
24 asked for 45 minutes of time on direct. And I
25 believe we asked for 30 minutes of cross-

1 examination of staff. Again, we don't know what
2 our cross-examination will be of other parties
3 until we see their testimony.

4 We have identified several -- four
5 conditions that we are concerned about. And there
6 is the issue that has been raised in the Coastal
7 Commission letter regarding enclosure of the
8 facility. We would expect that our testimony will
9 address the feasibility and advisability of that
10 when we file on the 7th. And I expect there'll be
11 some questions from other parties about that.

12 PRESIDING MEMBER MOORE: Do you have any
13 visual presentations in the form of computer
14 generated models or anything else that you'll be
15 showing during the --

16 MR. ELLISON: Yes, we will be presenting
17 the visual simulations of the project.

18 PRESIDING MEMBER MOORE: Okay. Staff,
19 counsel?

20 MS. HOLMES: Thirty minutes of direct;
21 30 minutes of cross.

22 PRESIDING MEMBER MOORE: And will you
23 have any computer generated models, as well?

24 MS. HOLMES: I don't believe we have
25 anything other than what's in the FSA.

1 PRESIDING MEMBER MOORE: Will you be
2 commenting on the visual model of the applicant?

3 MS. HOLMES: Well, I'm not quite certain
4 what they're referring to. I don't know if
5 they're referring to an enclosed facility or
6 something else. So it's hard for me to say.

7 PRESIDING MEMBER MOORE: Can you clarify
8 that at this time, Mr. Ellison?

9 MR. ELLISON: It is not our intention to
10 present a visual representation of an enclosed
11 facility. We will provide testimony as to what
12 the dimensions of enclosure would have to be; what
13 the feasibility of those dimensions would mean for
14 a location at this site. What that would mean in
15 terms of stack height, for example, because of air
16 quality restrictions and those sorts of things.

17 So, we certainly will be providing the
18 Commission with information about the feasibility
19 of enclosure. And we will certainly be providing
20 the Commission with testimony regarding why we
21 have determined that this type of enclosure is
22 neither necessary nor appropriate for this
23 facility.

24 PRESIDING MEMBER MOORE: Thank you. For
25 staff, counsel?

1 MS. HOLMES: Again, because I don't know
2 what the nature of the computer generated models
3 that they're going to present, I can't say. I
4 think 30 minutes is a good estimate. I would
5 point out, however, that if the Coastal Commission
6 differs and there is an enclosed facility
7 presented, whether it's either by the applicant or
8 by somebody that's hired by the Coastal
9 Commission, or if the Committee would -- I don't
10 know how this issue is going to go.

11 We'd like to reserve the ability to
12 comment on it. But I think 30/30 is a good
13 estimate to start with.

14 PRESIDING MEMBER MOORE: Okay. The City
15 of Morro Bay.

16 MR. SCHULTZ: Yes, the City would
17 reserve one hour for direct and 30 minutes for
18 cross-examination. Our direct witness is Gary
19 Clay.

20 PRESIDING MEMBER MOORE: Okay. Coastal
21 Commission.

22 MR. CHIA: Yes, thank you, Commissioner
23 Moore. Can you hear me okay?

24 PRESIDING MEMBER MOORE: Yes. In fact,
25 you can stand a little bit back from the phone. I

1 think you're coming across loud and clear.

2 MR. CHIA: I have a headset on, so I can
3 only stand back so far. But, I want to first --
4 if I'm really blaring I'll do my best -- I want to
5 first thank you for accommodating me in this
6 manner, and especially the audiovisual folks,
7 they've been especially cooperative.

8 As you know, our Executive Director,
9 Peter Douglas, did send a letter to the Energy
10 Commission on November 5th requesting that an
11 analysis be done by CEC Staff of either a fully
12 enclosed facility, or innovative screening that
13 would obstruct the more industrial appearing
14 facilities of the plant from public view,
15 especially from key observation points 5 and 6.

16 And I would welcome the response from
17 you and/or staff to his letter after I finish.

18 I would hope that, and request that you
19 require the applicant to bring forward an analysis
20 of an enclosed facility to the evidentiary
21 hearings. Ideally, we would appreciate staff's
22 review and/or -- independent review and/or comment
23 on that analysis.

24 We feel that because of the pristine
25 nature of this Morro Bay environment, pursuant to

1 the standards of the Coastal Act, the maximum
2 protection of visual resources should be afforded
3 here.

4 PRESIDING MEMBER MOORE: All right. I
5 will simply note for the record today that we have
6 that letter from Mr. Douglas. And that it is
7 docketed and will be the subject of some
8 discussion.

9 In addition, we will render an opinion
10 about whether or not we'll be considering any
11 additional items over what we previously had in
12 this case when we issue the next scheduling order.

13 For CAPE, for the intervenors?

14 MS. SODERBECK: Yeah, principle issue
15 relates to what will happen with the possibility
16 of enclosure, and particularly in light of recent
17 developments. And we don't have anyone direct on
18 that, but we would anticipate cross-examining
19 staff, City and Duke's witnesses.

20 PRESIDING MEMBER MOORE: Let me turn
21 back to Dan Chia. Dan, are you still on the line?

22 MR. CHIA: Yes, I am.

23 PRESIDING MEMBER MOORE: Are you
24 planning to come and offer testimony during the
25 evidentiary hearings? Or are you planning to let

1 the letter stand for itself?

2 MR. CHIA: I would first need to confer
3 with my managers. As you are aware, we're under
4 strict budget constraints, especially with respect
5 to travel. So, depending on where they're
6 located, I'm assuming they're going to be in Morro
7 Bay, I may or may not be able to attend in person.

8 But if this issue is not resolved to our
9 satisfaction then we would likely, or at least
10 make a strong effort to be there in person.

11 PRESIDING MEMBER MOORE: Okay. Thank
12 you.

13 MS. SODERBECK: Commissioner, may I
14 correct what I just said? We may have one direct
15 witness on that, and it may be Mr. --. It depends
16 on the scope of the discussion on the enclosure, I
17 think. So I don't really have a good estimate of
18 the time.

19 PRESIDING MEMBER MOORE: Okay.

20 MR. CHIA: Commissioner Moore, I would
21 just like to add that what we're asking here is
22 simply an analysis or a presentation. To this
23 point we don't feel that the body of information
24 or breadth of information is wide enough for
25 decision makers to make an informed decision with

1 respect to visual resources and the impacts the
2 facility may have along the coastline here.

3 So, at this point we're not taking a
4 position whether an enclosed facility would be
5 appropriate here. We simply do not know the
6 answer to that question until we see an analysis,
7 and ideally an independent analysis.

8 PRESIDING MEMBER MOORE: Understand.
9 For the applicant, a question on that topic. Do
10 you plan to have a response from the applicant's
11 point of view to Mr. Douglas' letter and the
12 concerns cited by the Coastal Commission Staff?

13 MR. ELLISON: We certainly do. There is
14 already a letter of response to Mr. Douglas'
15 letter back to Mr. Douglas dated November 20th,
16 which I believe we've already docketed. If not,
17 we will.

18 Secondly, we will, in response to the
19 Coastal Commission Staff's concern, be presenting
20 the type of analysis that I described earlier. We
21 certainly will be addressing the issue and
22 providing information to staff and to the
23 Commission and to the Coastal Commission Staff on
24 this question. And as to, you know, why we
25 believe that it's neither appropriate nor

1 feasible.

2 I would emphasize what I think should be
3 obvious to everybody, but I did hear the reference
4 in Mr. Chia's statement to the pristine
5 environment, that we are dealing here with an
6 existing power plant site. And in our long
7 negotiations with the City long ago, it was
8 determined that the number one visual mitigation
9 that Duke could perform would be to spend the
10 several tens of millions of dollars to demolish
11 the much larger existing facility and replace it
12 with something that is much smaller and further
13 from the Embarcadero.

14 And against that appropriate CEQA
15 baseline we feel very strongly that this project,
16 as it's presently proposed, has a significant
17 visual benefit, and certainly not an adverse
18 impact. Staff, I believe, agrees with that. But
19 we certainly will address this issue.

20 PRESIDING MEMBER MOORE: Well, that
21 subtle insertion of your point, and --

22 (Laughter.)

23 PRESIDING MEMBER MOORE: -- is noted.
24 And especially after I said we wouldn't be
25 discussing any evidence, but I'll point out your

1 point is on the table.

2 The Committee made clear, I believe, at
3 the front end that with regard to changes in the
4 land use that this is on a relative scale. So
5 we're very well aware that there is a preexisting
6 condition, and that the environment is a
7 reflection of what that preexisting condition is.

8 So that is noted, and is, I believe,
9 highlighted in our remarks, in our intention about
10 how to handle the case.

11 All right, let's go to public health,
12 then. To the applicant, you have two witnesses
13 cited. Do you expect 30 minutes?

14 MR. ELLISON: That's correct.

15 PRESIDING MEMBER MOORE: And are you
16 anticipating that you'll need time for cross-
17 examination on this?

18 MR. ELLISON: I think we need to reserve
19 30 minutes on this issue.

20 PRESIDING MEMBER MOORE: Okay. All
21 right, staff, counsel?

22 MS. HOLMES: I think I'd like to reserve
23 45 minutes for each, for direct and cross-
24 examination.

25 PRESIDING MEMBER MOORE: And you're

1 planning to have only one witness?

2 MS. HOLMES: That's correct.

3 PRESIDING MEMBER MOORE: Okay. The
4 City?

5 MR. SCHULTZ: The City doesn't plan on
6 any direct testimony, but does reserve 20 minutes
7 of cross-examination.

8 PRESIDING MEMBER MOORE: Okay. And for
9 CAPE, the intervenors?

10 MS. SODERBECK: For us this issue
11 overlaps with air quality significantly. To break
12 them apart I don't think we will have any direct
13 testimony on the public health portion, but we
14 would reserve time for cross-examination of both
15 staff and Duke's witnesses.

16 PRESIDING MEMBER MOORE: Thank you. All
17 right, for the topic that has generated the most
18 interest, and which is showing up last on our
19 list, but not last in importance, the air quality
20 category.

21 For the applicant, discuss your witness
22 plans, and your cross-examination plans.

23 MR. ELLISON: Certainly. We have no
24 disagreements with the FDOC. We have identified
25 three issues with respect to the FSA, two of which

1 I would consider relatively minor.

2 And so from our perspective, we don't
3 see this as a particularly contested issue,
4 although we have identified the three issues that
5 are described.

6 We, as I mentioned earlier, our witness
7 is available on the 17th, but not the 18th and
8 19th. We think that this is an issue that is
9 ready for hearing, and we would suggest that the
10 Committee schedule it for the 17th and commit that
11 we will finish air quality on that day, which we
12 think is certainly do-able.

13 There are issues, we know, that CAPE has
14 on air quality. And we think that they will
15 require some time -- they can make their own
16 estimate, of course -- to resolve those. But we
17 certainly think that the evidence can be taken on
18 an entire day.

19 And so we would propose that that issue
20 go forward on the 17th. If it can't be heard on
21 the 17th, then it would have to slip to January,
22 which is another reason that we think that it
23 ought to go forward now.

24 PRESIDING MEMBER MOORE: And so you're
25 going to reserve some amount of time for --

1 MR. ELLISON: Certainly. We would
2 reserve, as I mentioned, I think we need 30
3 minutes for our direct testimony. And we would
4 reserve 30 minutes for cross-examination of the
5 staff. And, again, I don't know what our cross-
6 examination of other parties will be.

7 PRESIDING MEMBER MOORE: All right.
8 Staff, counsel?

9 MS. HOLMES: Thank you. Staff would
10 like 30 minutes for direct. And depending upon
11 what's filed on December 10th, I believe it is, we
12 may need as much as two hours for cross-
13 examination.

14 PRESIDING MEMBER MOORE: And will you be
15 planning to have the representative from the AQMD?

16 MS. HOLMES: We had planned to do so,
17 but he appears to be listed as a CAPE witness, so
18 I'm not certain how that's going to work.

19 I mean typically the District
20 representative testifies on behalf of staff, and
21 staff sponsors the witness and the testimony.

22 PRESIDING MEMBER MOORE: And that --

23 MS. HOLMES: I wasn't including that.

24 PRESIDING MEMBER MOORE: Well, okay, but
25 I am. And so now let me go to some of the rules

1 that we're going to come down.

2 Two hours, two hours, two hours, two
3 hours. No, we're not going to do that. We're not
4 going to reargue the FDOC in these chambers. This
5 is not the forum to do that. If there's new
6 information, or if there's a comment and critique
7 on the way the data's presented, then that's
8 appropriate. But, this is not the air quality
9 hearing. That took place at the Air Quality
10 Management District, and I expect a full and
11 complete summary of that from the District Staff.

12 And I know District Staff is here, so
13 I'll ask them to comment on this. And I expect
14 that testimony to be sponsored, as a public
15 agency, by the Energy Commission Staff. So,
16 that's where I expect that testimony to appear.

17 With regard to experts that would come
18 in and who have data or critique, I expect a
19 succinct and precise explanation of what their
20 points are. But, again, this will not be a rehash
21 of the entire hearing that took place at the Air
22 Quality District.

23 Where there are differences of opinion
24 about the conclusions that were reached with
25 regard to how we might implement those, that's

1 appropriate. And this is an appropriate forum to
2 do that.

3 But, this will not be a battleground for
4 rehashing something where another public agency,
5 whose specific task in law is to adjudicate air
6 quality concerns, has already rendered an opinion.

7 So, just so the ground rules are clear
8 on that. I mean we're going to have an open, and
9 we're going to have probably a very far-reaching
10 discussion on air quality. But we're not going to
11 reinvent the wheel, because that's not the way
12 this forum will work.

13 The City of Morro Bay?

14 MR. SCHULTZ: The City does not plan on
15 presenting a witness on direct, but will reserve,
16 since we're not sure what the testimony will be,
17 reserve 30 minutes for cross-examination.

18 PRESIDING MEMBER MOORE: Okay. For
19 CAPE, for the intervenors. You've just heard how
20 the rules have come down. I'm assuming that
21 you've still got the witnesses that you've listed,
22 and that you'll construct a fair amount of
23 testimony regarding those. And --

24 MS. SODERBECK: That's correct, --

25 PRESIDING MEMBER MOORE: -- and we've

1 had a new -- we did get a new submission from you,
2 and I believe this mostly came from you, Ms.
3 Soderbeck?

4 MS. SODERBECK: Yes.

5 PRESIDING MEMBER MOORE: So this is now
6 filed and docketed, then I apologize for the upset
7 that happened on that. I'm not quite sure how it
8 fell through the cracks, but we do have it.

9 MS. SODERBECK: Okay. One comment is
10 I've tried to be very careful and limit our air
11 questions not to the FDOC, but particularly to the
12 CEQA issues that are involved, which are not
13 within the realm of the Air Quality District.

14 And I think everyone of the issues we've
15 identified in that regard goes to the significant
16 impacts or the appropriate mitigation as it
17 relates to CEQA.

18 So, it's not our intention to reinvent
19 the wheel, or reargue the Air Quality Board's
20 conclusions in its determinations.

21 PRESIDING MEMBER MOORE: Okay. Well, I
22 think -- and that's fair. And accept certainly
23 that's ground that is open for discussion and is
24 appropriate in this forum.

25 And I would certainly go back and

1 everyone has a copy of the summary sheet that I
2 submitted around, and to look at that, that would
3 be a fairly long day, given the kind of hours. So
4 I ask you to look back and structure your
5 presentation, considering that it's probably --
6 going to be choreographed by your group pretty
7 closely, I would imagine that you can tighten that
8 up and make sure that there aren't any overlaps
9 and --

10 MS. SODERBECK: I'll certainly try. One
11 comment I did want to make with respect to Mr.
12 Hartman, is that he is in the process of the
13 beginning of a study for us, just received some
14 data. And depending on what that data shows, may
15 or may not come forward with the study.

16 That will not be able, just because it
17 won't be ready yet, to be even identified probably
18 by the December date when you want a summary of
19 his testimony.

20 But, you know, we're working on that as
21 quickly as we can. And so is he.

22 PRESIDING MEMBER MOORE: The rest of
23 these witnesses are -- actually witnesses
24 available on the 17th, if that were to be the day,
25 but --

1 MS. SODERBECK: He's an out-of-state
2 consultant, so I don't know whether he would be
3 available on the December days or not.

4 PRESIDING MEMBER MOORE: Is there anyone
5 this list who is not available, should we decide
6 to go ahead with the 17th, 18th, 19th?

7 MS. SODERBECK: Dawson would not be;
8 he's out of state, as well. The three folks from
9 the APCD I listed just to make sure that we had
10 the right to talk to them about it. And if staff
11 wants to call them, that's fine. And I have no
12 idea what their availability is for any particular
13 day.

14 And I also have not had recent
15 discussions with Mr. Fairly. He also works full
16 time and I don't know what his availability would
17 be for those three days.

18 PRESIDING MEMBER MOORE: Okay. And
19 you're going to reserve time for cross-
20 examination, as well?

21 MS. SODERBECK: Yes.

22 PRESIDING MEMBER MOORE: And you're
23 planning to do the cross-examination as opposed to
24 having the witnesses cross-examine. So we'll
25 expect questions to come through one source is

1 what I'm saying.

2 MS. SODERBECK: Yes. That's fair.

3 PRESIDING MEMBER MOORE: It would be a
4 little awkward to have the whole group stand up
5 and propose --

6 MS. SODERBECK: No, I think they'll be
7 coming through one source. I'm going to have to
8 confer, again, but I think they'll be coming
9 through one.

10 PRESIDING MEMBER MOORE: All right.
11 With regard to the -- we solved the errata issue
12 earlier. And are there other items that the
13 parties know they want us to consider in terms of
14 these discussions?

15 MS. HOLMES: I have one question that
16 I'd like to ask.

17 PRESIDING MEMBER MOORE: Yes.

18 MS. HOLMES: It has to do with the
19 identification of exhibits. Duke had identified a
20 lengthy list of exhibits that they intended to
21 sponsor. Some of them were written by staff.

22 And I don't know how the Committee wants
23 to conduct hearings, but I think staff would
24 prefer that documents that are taken into evidence
25 be sponsored by those parties that are responsible

1 for producing them.

2 PRESIDING MEMBER MOORE: I concur. And
3 we'll handle it that way. I believe that if
4 there's a document that the applicant sees that
5 they would like to get on that is not being
6 sponsored by staff, they can bring it up to the
7 Committee and we'll make sure that it gets on.
8 That way everything that is necessary to come on
9 the record actually gets on.

10 But, I agree that procedurally that is
11 the logical way to go.

12 Before I go to housekeeping items, then
13 let me just ask if there are any public comments
14 on the procedures that we're intending to follow
15 here, or the days. I think both those topics are
16 open.

17 MR. SCHULTZ: Commissioner Moore?

18 PRESIDING MEMBER MOORE: I'm sorry, Mr.
19 Schultz.

20 MR. SCHULTZ: May I just real quick?

21 PRESIDING MEMBER MOORE: Yes.

22 MR. SCHULTZ: On behalf of the City
23 again, again remind you of the dates December
24 18th, 20th being the California League Conference,
25 and also our special legal counsel, Barry

1 Groverman, also for those dates is scheduled for
2 jury duty that we just found out about. So that's
3 another complication.

4 So, just ask that you keep that in mind.
5 The subjects we're concerned about are the ones
6 that we mentioned that we do have direct
7 examination of witnesses we want to present.

8 PRESIDING MEMBER MOORE: Understand.
9 And when we're setting up the scheduling order we
10 will, I promise you, take that into account.

11 So, again, reserving some last-minute
12 housekeeping to the very last, let me just turn
13 and ask, is there anyone in the public who would
14 like to comment on the procedures that we're
15 instituting here, or the dates that might be
16 selected, or the topic order in which we're
17 intending to proceed with discussion?

18 Again, if you'd identify yourself as
19 clearly as you can, and if you have a business
20 card our scribe would certainly --

21 MS. CHURNEY: My name's Bonita Churney,
22 and I'm a resident of Morro Bay.

23 PRESIDING MEMBER MOORE: Can you spell
24 your last name, please?

25 MS. CHURNEY: C-h-u-r-n-e-y.

1 PRESIDING MEMBER MOORE: Thank you.

2 MS. CHURNEY: And as a concerned
3 resident, particularly with respect to air quality
4 issues, I would just like to reiterate and support
5 the comments you've already heard from the City
6 and from the intervenor with respect to piecemeal
7 analysis in this case.

8 And in particular on the air quality
9 issues there are other issues that will be coming
10 up we now know in FSA part two, or even part
11 three, that may affect air quality, such as
12 perhaps consideration of dry cooling.

13 So, I would urge the Commission to put
14 those hearings off, air quality, and also any
15 other hearings, such as visual, that also may be
16 impacted by dry cooling or considerations in FSA
17 part two or part three.

18 Thank you.

19 PRESIDING MEMBER MOORE: Thank you,
20 ma'am. Anyone else who'd like to comment on the
21 procedures.

22 DR. SMITH: Richard Smith, resident of
23 Morro Bay.

24 PRESIDING MEMBER MOORE: You probably
25 don't have to spell that one.

1 (Laughter.)

2 DR. SMITH: Yes. I had just docketed, I
3 think yesterday, some new information on
4 nitrification. And that becomes both an air and a
5 water issue.

6 And so one more time, reiterate it's
7 very difficult to imagine how these two things can
8 be teased apart.

9 And also frustrated, as a public member,
10 trying to do this so close to Christmas. It's
11 hard on a lot of folks. I know you've addressed
12 that.

13 PRESIDING MEMBER MOORE: Yes, I share
14 that frustration, believe me. I can think of a
15 couple of other people in my sphere that do, as
16 well.

17 Anyone else who would like to address
18 us?

19 MR. McCURDY: My name is Jack McCurdy,
20 M-c-C-u-r-d-y, resident of Morro Bay.

21 My concern is over the analysis of the
22 enclosure of the plant. It's my understanding
23 that Peter Douglas of the Coastal Commission had
24 requested the Energy Commission Staff to conduct
25 an independent analysis.

1 And now the way it seems to be unfolding
2 is that the applicant will be making some type of
3 an analysis for presentation during the
4 evidentiary hearings.

5 My concern is whether the staff will
6 have an opportunity to thoroughly analyze that in
7 advance, to provide something of an independent
8 evaluation to meet the request of Mr. Douglas.

9 Thank you.

10 PRESIDING MEMBER MOORE: Thank you.
11 Anyone else who would like to put their comments
12 on the record?

13 All right, seeing none, then let me --

14 MR. CHIA: Commissioner Moore?

15 PRESIDING MEMBER MOORE: Yes.

16 MR. CHIA: I'm sorry, I'd like to add
17 one last thing regarding the request to the delay
18 of evidentiary hearings.

19 We're certainly sensitive to the
20 Commission's time constraints and the protracted
21 review schedule that's taken place on this
22 project. But to the extent that the release of
23 the FSA two, and now three, and their cascading
24 effects on other areas of the FSA, may frustrate
25 or confuse -- or unintentionally withhold

1 information from the public and decision makers,
2 we would support a delay in those hearings of
3 issues that are in dispute.

4 Secondly, the issue of the trifurcation
5 of the report. We would, of course, hope to see
6 or request that the FSA two not be released until
7 three is ready, for a couple reasons. Timing of
8 the Coastal Commission's duties under the Coastal
9 Act and Warren Alquist Act to report to you on the
10 consistency of the project with the Coastal Act,
11 we have internal deadlines that we have to meet.
12 And we may not be able to bring the report to the
13 Coastal Commission in time to be able to
14 influence, or at least state the Coastal
15 Commission's opinions at evidentiary hearings.

16 And secondly, if the FSA is split into
17 three parts, we will likely wait to bring our
18 consistency report to the Energy Commission until
19 after the third part comes out, which is the,
20 obviously the credible missing link of the entire
21 FSA.

22 PRESIDING MEMBER MOORE: Thank you, Mr.
23 Chia.

24 All right, with that I'm going to bring
25 this proceeding to a close and tell you, in terms

1 of housekeeping, I'll make a decision with regard
2 to the intervenor petitions by close of business
3 tomorrow.

4 And we'll try and have some new
5 scheduling order out from the early part of next
6 week. I have to be in Denver on Monday, so it
7 won't happen on Monday. But it probably will
8 happen on Tuesday. And so I'll make this as rapid
9 as I can, and I will take into account all the --

10 MS. DUNTON: Can I comment --

11 PRESIDING MEMBER MOORE: Oh, sorry.

12 MS. DUNTON: I thought you were going to
13 ask me --

14 PRESIDING MEMBER MOORE: I didn't even
15 see you. You know, I have a letter. Come on up.

16 MS. DUNTON: Is there any questions you
17 want to ask me before you --

18 PRESIDING MEMBER MOORE: No, I have a
19 letter requesting intervention status --

20 MS. DUNTON: Okay.

21 PRESIDING MEMBER MOORE: -- and I'll
22 take it under advisement, I have taken it under
23 advisement.

24 MS. DUNTON: Okay.

25 PRESIDING MEMBER MOORE: And we'll issue

1 a response --

2 MS. DUNTON: I know it was late --

3 PRESIDING MEMBER MOORE: -- after the --

4 MS. DUNTON: If you wanted to, you know.

5 PRESIDING MEMBER MOORE: I don't have
6 any questions.

7 MS. DUNTON: Okay.

8 PRESIDING MEMBER MOORE: If you have
9 anything else that you want to amplify that's not
10 in the letter, then --

11 MS. DUNTON: Well, most of the concerns
12 I have are in the other issues that will come up
13 in the other staff assessment that haven't been
14 filed yet. So I don't think it would delay any of
15 the hearings or anything, my filing late.

16 PRESIDING MEMBER MOORE: And your
17 intention is not to interact in the areas other
18 than in cultural resources?

19 MS. DUNTON: No, no.

20 PRESIDING MEMBER MOORE: Okay.

21 MS. DUNTON: Okay.

22 PRESIDING MEMBER MOORE: Mr. Ellison has
23 a question.

24 MR. ELLISON: Just two points. One, I
25 want to make it clear, you know, other parties

1 have a right to comment on petitions for
2 intervention. And I want to make clear that Duke
3 does not object to this intervention, nor to the
4 City's.

5 Secondly, I do want to state for the
6 record that if the -- we've had a number of
7 comments, including just recently on this so-
8 called piecemealing question. If the Commission
9 is concerned, or if you're concerned about that
10 issue, we have not shared our views on that, and
11 would be happy to do so. That's all I'll say for
12 the moment.

13 PRESIDING MEMBER MOORE: I'm happy to
14 hear them.

15 MR. ELLISON: All right, well, then in
16 brief I'll --

17 PRESIDING MEMBER MOORE: This is the
18 right forum.

19 MR. ELLISON: Okay, in that case I will
20 briefly address the issue. Two things.

21 PRESIDING MEMBER MOORE: Pat, you don't
22 have to stay, --

23 MS. DUNTON: Okay.

24 PRESIDING MEMBER MOORE: Thank you.

25 MR. ELLISON: First of all,

1 piecemealing, some of the parties have cited CEQA
2 decisions on piecemealing with respect to
3 bifurcation of the staff's assessment. And those
4 authorities address an entirely different issue.

5 Piecemealing under CEQA involves
6 piecemealing of the project, not breaking up the
7 analysis into separate documents. I'll say no
8 more about that, other than to say that those
9 authorities are completely off the point.

10 Secondly, as you well know,
11 Commissioner, it is not at all uncommon for staff,
12 in these proceedings, to issue its final staff
13 assessment in multiple parts. It is not all
14 unprecedented for the staff to do it in three
15 parts, as is proposed here.

16 And lastly, I would say that with
17 respect to the issue of the alternatives analysis
18 having a relationship with other issues in the
19 proceeding, whether that be water or air quality
20 or anything else, that is inherent in the nature
21 of alternatives analysis. And is true in every
22 proceeding. That when the alternatives issue
23 comes up there will be a discussion of the
24 alternatives from the perspective of all the
25 different topics in the proceeding.

1 And there is nothing about, say for
2 example the discussion of the noise impacts of dry
3 cooling is an alternatives issue. And that is the
4 way the Commission has handled that in the past.

5 There is no way that you can, no matter
6 what order you put them in, alternatives overlaps
7 with these other issues. And so I don't think
8 that there is anything inappropriate about -- in
9 fact, I think it's probably beneficial to all the
10 parties to have alternatives come last, after the
11 other issues with respect to the project have been
12 fully litigated and heard. I mean you can
13 concentrate on a particular issue of alternatives
14 and what the various topic areas, how the various
15 topic areas are affected by a proposed
16 alternative.

17 Thank you.

18 PRESIDING MEMBER MOORE: Thank you.
19 Understand. Response from counsel.

20 MS. HOLMES: I certainly agree with Mr.
21 Ellison with respect to the alternatives.

22 With regard to the piecemealing issue,
23 it might alleviate some concerns for people to
24 know that the staff assessment on the cooling
25 options, it does address each technical area.

1 For example, there will be a discussion
2 of air quality impacts of various cooling options,
3 noise impacts. But those discussions are written
4 with reference to and in the context of those
5 sections in the staff assessment for the project,
6 as proposed.

7 So, they are not two independent
8 separate sections. They may be published as
9 separate documents, but they are related to each
10 other. And I think that that relationship will be
11 clear and be easy to follow when people see the
12 appendix.

13 So, I want to -- if people are concerned
14 about them being written without reference to each
15 other, it's not true. The air quality discussion
16 having to do with cooling options will be
17 consistent with and will reference and will be
18 within the context of the air quality discussion
19 on the proposed project.

20 The last point that I wanted to make was
21 that there was a discussion earlier today about
22 when parties file testimony on FSA part two
23 topics. There wasn't an express discussion, but
24 it appears that some people are planning not to
25 file complete testimony on December 10th.

1 If that's the case, and obviously that's
2 the Committee's decision, I would simply point out
3 that if staff could have more than five days to
4 review the testimony, which is what's happening
5 for us on the FSA part one topics, it might
6 minimize the amount of time that we need at the
7 hearings, if we could have more time to review
8 issues.

9 PRESIDING MEMBER MOORE: Would you put
10 that in the form of a letter --

11 MS. HOLMES: Yes.

12 PRESIDING MEMBER MOORE: -- to me?
13 Thank you.

14 MR. ELLISON: I certainly want to
15 emphasize that it's our intention to file complete
16 testimony. I believe it's the 7th, rather than
17 the 10th.

18 PRESIDING MEMBER MOORE: Right.

19 MR. ELLISON: And we will be filing
20 complete testimony. I did hear some statements
21 from CAPE that they may not, and I want to
22 emphasize it's our understanding that the
23 testimony is due on the 7th.

24 PRESIDING MEMBER MOORE: It is due on
25 the 7th.

1 MS. HOLMES: Okay, then, my concern is
2 unwarranted.

3 PRESIDING MEMBER MOORE: Okay.

4 MR. ELLISON: We shared the concern;
5 that's why --

6 PRESIDING MEMBER MOORE: Well, as I've
7 said in the past, we've had a great deal of time
8 to get ready for this, and certainly whether it's
9 a revised design for the power plant or not, the
10 intention and the footprint and the magnitude of
11 the project have been known for well over two
12 years.

13 So, yeah, I'm going to be as flexible as
14 I can, but, in fact, this is not an ongoing
15 pastiche that will be developing itself over a
16 long period of time.

17 So, yes, they are due on the 7th.

18 MS. GROOT: Commissioner Moore.

19 PRESIDING MEMBER MOORE: Yes, ma'am.

20 MS. GROOT: I'm not sure I understand.
21 Are we saying that we must file testimony on FSA
22 part two, as well, on that date?

23 PRESIDING MEMBER MOORE: You don't have
24 part two yet.

25 MS. GROOT: Okay, we're just talking

1 about FSA part one, then?

2 PRESIDING MEMBER MOORE: Right now we
3 are talking about FSA part one.

4 MS. GROOT: Thank you. And I think we
5 have another comment here.

6 MS. SODERBECK: When I used the term
7 piecemeal I guess it's not in a technical sense in
8 any way, but again for us it's more of a
9 consideration of how many times do we have to have
10 people come in and consider air issues, and make
11 arrangements for them to be here, and that sort of
12 procedural problem, if we have to address those
13 before the air issues that are coming out of the
14 alternatives and the dry cooling possibilities.

15 It would be our preference to address
16 all of those at once, given our limited funds.

17 MR. NAFICY: Excuse me, can I just
18 briefly add to that? I think staff's -- Ms.
19 Holmes' comments about the interrelation between
20 the analysis of air, water, visual impacts, noise,
21 between the part three they're proposing and
22 what's already been proposed, actually underscores
23 the reasons CAPE has cited for having one hearing
24 on all sets of issues.

25 I mean it's precisely the point, that

1 these are all interrelated. And it makes sense to
2 address them all in the same forum, rather than
3 following the unfortunately break-up of the
4 document.

5 I mean it seems to me that's rather
6 arbitrary for the hearings to follow the pattern
7 of the documents being produced in different
8 portions simply because they're being produced in
9 that fashion, if the issues, themselves, are
10 interconnected to the extent that staff is now
11 asserting.

12 The other point I wanted to make
13 regarding the filing of testimonies, it seems to
14 me now that apparently the Committee is actually
15 entertaining, and try to decide on, which issues
16 will, in fact, you know, be the subject of
17 hearings that are coming up.

18 I didn't understand that that's a
19 foregone conclusion that in every area that's
20 identified in FSA part one is going to be an
21 evidentiary hearing later on in December.

22 So, to that extent it seems like
23 especially CAPE is being put in somewhat of a
24 disadvantage not knowing, in fact, whether the
25 testimony will be taken, evidentiary hearings will

1 be conducted on these issues. And yet we have to
2 go forward with preparing our testimony, not
3 knowing whether, in fact, it will be needed.

4 PRESIDING MEMBER MOORE: Well, that's
5 the reason that you have to lean on me, and can
6 expect from my office a scheduling order that says
7 what will be coming up and on what dates.

8 So, I'll get that out, as I said, as
9 early next week as I possibly can. Probably
10 expect it on Tuesday.

11 MR. SCHULTZ: Clarification?

12 PRESIDING MEMBER MOORE: Yes, counsel.

13 MR. SCHULTZ: The City. What you're
14 saying is the December 7th date is when all
15 written testimony is required regardless of
16 whether those hearings -- there might be some
17 hearings that don't occur until January?

18 PRESIDING MEMBER MOORE: Well, as it
19 stands right now, we're assuming that they will be
20 required, or that the hearings will go ahead as
21 scheduled. And under those circumstances, yes, it
22 would be required by December 7th.

23 All right, with that before us, I'm
24 going to close this hearing. Tell you that we'll
25 have decisions out on the items that we've

1 discussed today, on the interventions, and on the
2 schedule, by early next week. I anticipate
3 Tuesday.

4 And to let you also know that there is a
5 light repast apparently, provided by Duke. It's
6 in the antechamber to this room, and you're all
7 welcome to partake of that.

8 And thank you all for coming, appreciate
9 it.

10 (Whereupon, at 11:55 a.m., the
11 prehearing conference was concluded.)

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CERTIFICATE OF REPORTER

I, DUNCAN FANKBONER, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of December, 2001.

DUNCAN FANKBONER

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